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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO AND MARITIME LOCAL UNION NO. 8-801,

Petitioners,

v.

MOBIL OIL CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioners, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local Union No. 8-801 thereof, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on November 8, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals *en banc* entered November 8, 1974 (Appendix A, pp. 1a-36a, *infra*) is reported at 504 F.2d 272. The opinion of the original panel entered August 10, 1973 (Appendix B, pp. 1b-16b, *infra*) is reported at 483 F.2d 603. The District Court's Findings of Fact and Conclusions of Law are reported at 81 LRRM 2051.

JURISDICTION

The original decision of a panel of the Fifth Circuit was entered on August 10, 1973. Pursuant to timely motion of Respondent Mobil, rehearing *en banc* was granted and decision of the *en banc* court was entered November 8, 1974. On January 20, 1975, Mr. Justice Powell granted an extension of time until April 7, 1975, for the filing of this Petition. Jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether under Section 14(b) of the Taft-Hartley Act and the Texas "Right to Work" laws a union security provision in the form of an agency shop clause may apply to seamen who work exclusively aboard oceangoing vessels which move between Texas and non-Texas ports?

2. Whether the courts below should have withheld declaratory judgment in favor of referral to the National Labor Relations Board for the initial decision in accommodating Sections 14(b), 8(a)(3) and the Texas "Right to Work" laws?

STATUTES INVOLVED

The pertinent statutory provisions, Sections 14(b) and 8(a)(3) (29 U.S.C. §164(b) and 158(a)(3)) of the

Labor-Management Relations Act, 1947, and the Texas "Right to Work" statutes, Articles 5154g, 5207a and 5154a, Vernon's Annotated Civil Statutes, are set forth in Appendix C, pp. 1c-2c, *infra*.

STATEMENT

Respondent, Mobil Oil Corporation, negotiated a labor contract with Petitioner unions. It then sued the unions for declaratory judgment that the agency shop clause of the contract is illegal under section 14(b) of the Taft-Hartley Act and the Texas "right to work" law. The District Court declared the clause illegal, holding the Texas act does apply. On original submission, a panel of the Court of Appeals held that the Texas act does not apply and reversed by a 2-to-1 vote. On rehearing *en banc*, the Court held, by an 8-to-6 vote, that the Texas act does apply, Judge Goldberg not participating.

The covered employees are blue-water seamen who work exclusively aboard ship on Mobil's eight oceangoing tankers which move typically between Texas and New York and other Atlantic coast states but often move between non-Texas ports and even in foreign commerce. When vessels do travel to Texas they are present in the port of Beaumont only 5.5% of the total time. Eight times a year a vessel travels between the east coast and Puerto Rico without touching Texas. At the time of trial, one of the vessels was en route to Guam on a six-month charter and had not been to Texas in 50 days. All vessels are located on the high seas or in non-Texas ports 80% to 90% of the time. Fifty-seven percent of the seamen are residents of states other than Texas, while 43% are Texans. (App. 25a) The declaratory judgment adjudges that the application of the agency shop clause to "any or all" of these seamen contravenes the Texas statutes. 81 LRRM 2053.

Mobil is a New York corporation, with top corporate offices in New York. Since 1942, labor contracts covering this bargaining unit have been negotiated in New York. The instant contract was negotiated and signed in New York, then typed in final form and re-executed partly in Texas.

Mobil's marine transportation system is operated by its Maritime Transportation Department, which is headed by its Gereral Manager, and below him, by its Manager of U. S. Operations, all located in New York. Below this level is the Manager of Gulf-East Coast Operations, who offices in Beaumont, Texas and who heads up the "Gulf-East Coast Operations" which is also located in Beaumont.

Until 1962 "Gulf-East Coast Operations" was also headquartered in New York but in that year it was transferred to Beaumont. The transfer of this intermediate level of management and operations gave rise to numerous contacts between Mobil and Texas so that, according to the *en banc* majority, Texas is now "intimately involved" with this employment relationship and has "employer/employee contacts" which far outweigh those of any other state. The Court tallied these contacts as set out below which it evaluated "qualitatively", *not* "quantitatively"—in the Court's words—to determine whether application of the Texas law "would be in furtherance of the Taft-Hartley Act's expressed purposes." (App.6a-7a)

The Court reached its affirmative answer by divining and following a non-existent congressional policy which it thought prompted Section 14(b). The Court correctly noted that the Taft-Hartley Congress was pointedly concerned with abuses in the initial hiring of employees, especially in

the maritime industry, but then, grossly misreading legislative history, it deduced that Section 14(b) is the result of that concern and a tool selected by Congress to correct that problem. Thus it concluded that it should overrule the panel majority's adoption of the job situs test for this deep sea bargaining unit because it does not effectuate congressional policy relating to the initial hire of employees. In so doing, the Court passed without comment the clear, accurate demonstration by the minority opinion that it was Section 8(a)(3) of the Act, not section 14(b), that Congress adopted to regulate initial hiring of employees. (App. 27a-30a)

The majority considered and likewise rejected the job situs test adopted by the National Labor Relations Board in multi-state situations.[1]

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1. In union shop election procedures in multi-state situations, the National Labor Relations Board adopted the job situs test to reach accommodation between different state laws and between sections 8(a)(3) and 14(b). Where employees of a single company worked in many states, some of which prohibited union security, the Board designed separate, appropriate bargaining units according to the job situs of employees, thereby applying the law of each state to the employees who worked in that state. One benefit of this test, noted by the Board, was that it results in the least amount of extraterritorial effect being given to the laws of one state as against those of another. *Northland Greyhound Lines, Inc.*, 80 NLRB 288 (1949).

In another case, the company was headquartered in New York, but its employees were mobile equipment installers who worked in 45 states and were frequently transferred from state to state and who, therefore, worked in right to work states from time to time. The Board rejected the claim that the New York location of company headquarters should make New York law applicable to entire operation, adhering instead to the job situs test. It held that each employee of the company would be considered subject to the law of the state in which his job site was located on the eligibility date. *Western Electric Co., Inc.*, 84 NLRB 1019 (1949).

The Board's decisions were distinguished by the *en banc* majority on the narrow basis that they concerned *which* state law applied and did not reach the issue at bar (App. 5a), a distinction that Chief Judge Brown found insufficient to cause rejection of the job site test. (App. 34a)

Section 8(a)(3) of Act authorizes agreements making union membership a condition of employment "on or after the thirtieth day following the beginning of such employment. . . ." (App. 1-2c) The section equally authorizes union shop and agency shop. *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963). The challenged contract clause provides:

> "For the duration of the Agreement all employees hired shall, as condition of employment, become members of the union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date.

There was no claim or finding that the clause is not in accord with section 8(a)(3) of the federal act, but rather that it is void and unenforceable under Texas right-to-work statutes.

The Majority Opinion

Judge Thornberry's opinion develops six points which we summarize and paraphrase closely to disclose the reasoning:

1. The decisions of the NLRB in the *Western Electric* and *Northland Greyhound* cases adopted the job situs test in determining the appropriate bargaining units for union security purposes where employees performed their work in many states. However, the issue in those cases was *which* state law applied, not whether *some* state law applied to the employment relationship. Thus, the exact question now before the Court was aborted in those cases.

2. Texas has "quantitatively and qualitatively" greater contacts with this employment relationship than does any other state, including New York. (App. 4a, Fn. 3) This stems from the Beaumont, Texas location of headquarters where personnel and payroll records are maintained, payroll checks are written and mailed, state and federal taxes are deducted from wages, union dues are checked off and grievances are submitted and considered. Texas administers unemployment compensation. A more substantial part of the administration and performance of the labor contract occurs in Texas. 123 of 289 seamen reside in Texas; 152 of the 189 list Beaumont as their shipping port; final hiring and termination decisions are made in Beaumont. (App. 3a-4a)

The number of contacts is a highly relevant consideration, but the true importance of these contacts is to be understood not in a quantitative vacuum but in the qualitative background furnished by Congress. "Our job is not to add up all of the contacts and to decide which jurisdiction has the 'most.' Our task is to discern whether application of the Texas right-to-work law would be in furtherance of the Taft-Hartley Act's expressed purposes." (App. 6a-7a)

3. When the Congress prohibited the closed shop while permitting the union shop in the Taft-Hartley Act, the Congress was demonstrating its concern with the process by which persons were hired. The maritime industry, with its hiring halls, was singled out by Congress as a serious problem area in which employer freedom in initial selection of employees was unduly limited. In short, Congressional discussion on compulsory unionism focused not

on "job situs" but on the hiring process. And, the language of section 14(b) which looks to the "execution or application" of Union security agreements, refutes the notion that Congress was concerned with job situs rather than "the effects of such an agreement on men and women seeking employment in a mobile society." (App. 9a-13a)

4. The Texas statute is triggered by the act of hiring within the state. The state statute does not focus on job situs or place of job performance. This is consistent with the language and intent of section 14(b). The fact that 60% of job applicants come from Texas gives Texas good reason to apply its right-to-work law. (App. 15a) During their off-duty or "vacation" periods, Texas employees live and act like other Texas citizens. These are precisely the people the Texas law was designed to protect. (App. 15a)

5. In 1951 Congress amended the Railway Labor Act, 45 U.S.C. §§ 151 et seq. to authorize union shop agreements "notwithstanding" "the law of any state" but it there used express language to defeat application of state law. This instance of Congressional action demonstrates that state right-to-work laws are not to be ignored unless the language or legislative history of the federal law permits such a course. (App. 19a) To carve out an exception here for seamen without suggestion to do so from Congress would encroach upon legislative authority. (App. 20a) Nothing suggests that Congress intended to create a special rule for maritime workers. (App. 18a)

6. During the House debate on Taft-Hartley, passing reference was made to the McCarran Act, 150 U.S.C. §§ 1011, et seq., in which Congress declared that activities of insurance companies are subject to state regulation. While the legislative history of the McCarran Act suggests an intent to limit the extraterritorial application of state laws, there is nothing to that effect in the legislative history of the Taft-Hartley Act. The Supreme Court has permitted state regulation of maritime insurance contracts which clearly have an extraterritorial effect. *Wilburn Boat Co. v. Firemen's Fund Ins. Co.*, 348 U.S. 310 (1955) (App. 13a-14a, fn. 12)

Minority Opinion

Joining issue squarely, Judge Ainsworth's dissent is based upon the following points which we summarize:

1. The majority points out that Congress carved out no exception for seamen but fails to discern that seamen have traditionally occupied an exceptional status in regard to the regulation and control of their employment by maritime and federal statutory law and not by state law, and section 14(b) cannot reasonably be construed to remove them from that category. Federal statutory and maritime law controls all rights and restrictions flowing from the seaman's employment. Seamen are wards of admiralty, with special status and protection. Hiring, discharge and various terms of employment are regulated by shipping articles mandated by federal statute. Compensation for illness, injury, disability and death are covered by maintenance and cure doctrine or by Jones Act or Death on High Seas Act. Federal maritime law

covers the gamut of the seaman's employment relationship including wages, maritime liens for collection thereof, protection against attachment or assignment of wages, payment of one-half of unpaid wages in every port, double wages for wrongful withholding, physical qualifications and disciplinary problems. In practical effect, state regulation of this employer-employee relationship stops at the water's edge. State law may not properly control except for the novel injection of Texas right-to-work law here. (App. 25a-27a)

2. As the majority opinion emphasizes, Congress was in truth concerned with the adverse impact of compulsory unionism on the hiring process but section 14(b) was not designed to be the remedy for these ills, as the majority suggests. Rather, the legislation history of the Taft-Hartley Act shows that Congress designed section 8(a)(3), 29 U.S.C. § 158(a)(3), to solve problems in the hiring process by eliminating prior union membership as an employment condition and by excluding new employees from union shop requirements during the first 30 days of employment. (App. 28a-29a) This agency shop clause avoids the evils in the hiring process consistently with Congress' prescribed method. Its enforcement is in keeping with federal labor policy expressed in sections 7 and 8(a)(3) of the Act.

On the other hand, section 14(b) was inserted into the Taft-Hartley Act merely to restate preexisting law, not to expand the jurisdiction of states relative to employment conditions of maritime workers. The original Wagner Act itself had not been intended to override state laws regulating the closed shop. (App. 28a; Fn. 16)

3. The consistent and traditional control by federal law of maritime employment relationships and contracts refutes the proposition that Mobil's contacts with Texas justify injecting state law into maritime affairs. The original majority panel decision is correct and should be reaffirmed. (App. 31a) Job situs of employees is the most important and logical factor for these employees whose principal place of employment is on the high seas. Use of the employer's headquarters as the decisive criterion could cause bizarre consequences. In this case, the change in headquarters from New York to Beaumont did not substantially change the employment of the men. (App. 30a-31a)

4. The State itself has not been sufficiently concerned to invoke its laws or intervene in this case. Employer is seeking to avoid its own contract by vicarious assertion of Texas law. (App. 30a)

5. The result reached by the majority is somewhat impractical. The attempt of the majority to give extraterritorial effect to Texas law at the behest of Mobil fails in soundness and logic. None of the employees works in Texas. Fifty-seven per cent of the employees do not even reside in Texas. (App. 31a) The majority opinion does not explain how Congress could fairly be said to have intended that a New York employee of Mobil, who resides in a state where his employment contract was entered into and where agency shop provisions are permissible, and who performs no work whatever in Texas, should be prohibited by Texas law from enjoying the benefits of an agency shop provision in his employment contract. (App. 30a), Fn. 21)

Concurring Dissenting Opinion

Chief Judge Brown, joined by Judge Dyer, concurred in the dissent by Judge Ainsworth and added these points:

1. The majority opinion starts and stops with the tacit assumption that the Court must find *some* applicable state law—almost in a conflict of laws analysis. The basis of such assumption is not discernible in the Act or its legislative history. The emphasis of the Act is that union security agreements are of such importance that, absent state law outlawing union shop employment relationships with that state, they will be favored.

2. The job situs rule, though never before applied in precisely this situation, is merely a logical distillation of section 14(b). For that reason, it should be followed here. The Board's decisions in *Northland Greyhound* and *Western Electric* are highly relevant. (App. 34a, Fn. 6)

One benefit of the job situs test noted by the NLRB was that it would diminish the extraterritorial effect of the laws of any one state.

3. It would be better administration and more consistent with sound legal principles for the Court to refer this case to the NLRB under the doctrine of primary jurisdiction. Where 57% of the employees covered by this agreement are not Texas residents, further findings of fact and exploration of alternative remedies would certainly appear to be mandated. The Court is trying to divine congressional policy never before faced in accommodating sections 8(a)(3) and 14(b). That policy should be explored first by the agency charged with responsibility for administering the Act.

REASONS FOR GRANTING THE WRIT

1. The question is one of "exceptional importance", as all the judges below recognized. Five of the six states within the Fifth Circuit, all with coastal areas, have "right to work" laws. (App. 2a, Fn. 1) Twenty-four states contain Atlantic, Pacific or Gulf coastal areas, eight of which have such laws,[2] while sixteen coastal states expressly authorize union security contracts within their borders or impliedly permit them.[3] 500 American flag vessels manned by approximately 10,000 seamen commute between ports in these states or from them into foreign commerce.

2. This decision ensnarls in state "right to work" laws labor contracts covering all American flagships in coast-wise or foreign commerce if the vessels move between "right to work" states and other states or nations. The opinion expressly holds:

> "The fact that maritime work is interstate, or even international, in character does not imply that Texas law is inapplicable. . . ." (App. 16a)

And, further, by holding that the application of "right to work" laws promotes the Taft-Hartley Act's objective of curing abuses in the original hiring of employees, especially in the hiring halls of the maritime industry (App. 5a-6a; 10a-13a, the decision exalts the laws of "right to work" states over those of other states and practically decrees that they be given preferred status or reach, in comparison to the laws of other states. The decision is an

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2. Texas, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Georgia.

3. Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Louisiana, Washington, Oregon, California, Hawaii, and Alaska.

invitation to the many eager partisans in this controversial area to litigate in the interest of stretching the reach of "right to work" laws. For the first time right-to-work supporters will be armed with a decision that federal policy is promoted by a generous application of state right -to-work laws, if the ruling below is left to stand.[4]

3. The decision invites conflict, forum shopping, and races to the courthouses of different states by interpreting section 14(b) to authorize extraterritorial operation of one state's law even to the point of intrusion into another state. In this very case, why would not a New York court be equally justified in holding that New York contacts with this employer-employee relationship are also sufficient to support extraterritorial application of its own statutory law and policy to this case, especially since it is the chartering state of Mobil and site of Mobil's home office where final authority over bargaining, operational, and hiring matters rests and is exercised and where so many of these seamen reside? Explicit invitation for extraterritorial conflicts is inherent in the broad assertion of the majority opinion that:

> "The language and history of section 14(b) suggests that a state may apply its right to work law whenever the state has a significant interest in the process by which a union security agreement is applied." (App. 13a-14a)

4. The court below was favored with an *amicus curiae* brief from the National Right to Work Legal Defense Foundation but not even that able and diligent group suggested that section 14(b) is a congressional tool to regulate hiring through state action. Nor did Respondent Mobil make such a suggestion to the court. Undersigned counsel does not find in legal literature any analysis or discussion of the role of section 14(b) along the lines of the holding in this case.

This is the parlance of due process where the jurisdictional reaches of state courts may and do frequently overlap, but it is somewhat inapposite to sections 8(a)(3) and 14(b) which look to the accommodation of state laws to each other and the avoidance of impingement by one state policy upon another state.

4. The majority fell into fatal error in attributing to section 14(b) a role in the elimination of abuses in hiring resulting from closed shops or hiring halls. (App. 11a-14a) Not one word of the legislative history accords to section 14(b) or to state law this role or any other function in the hiring process. To the contrary, as the minority demonstrates by citation of chapter and verse in the clear legislative history made by Senator Taft himself, it was section 8(a)(3) with its proviso that was designed by Congress to eliminate the abuses of the hiring monopoly of the closed shop system. Section 8(a)(3) removes as a matter of federal law prior union membership as a prerequisite to hiring and provides as a matter of federal law a thirty-day delay before a new employee may be subjected to union shop requirement. (App. 29a-30a) By adopting section 8(a)(3) in this form Congress established two complementary principles of federal law: first, union membership must not be a prerequisite to the act of hiring and for 30 days thereafter, but second, union membership may be made such a prerequisite after 30 days of employment. Obviously, the act of hiring is controlled by federal law, and the states are not left with an option under section 14(b) to permit

or not to permit union membership to be a prerequisite to hiring.[5]

Beyond the act of hiring Congress did accord to the states an option under section 14(b) to allow or to prohibit union security but at the same time Congress rejected right-to-work as an element of federal policy. An amendment by Senators Ball of Minnesota and Byrd of Virginia sought to eliminate the proviso of section 8(a)(3), 2 Leg. Hist. L.M.R.A. 1418. Senator Ball argued that union security should be abolished as a matter of federal law as it had been by some 13 or 14 states at that time. (Ibid 1418-1420) In reply, Senator Taft successfully defended the proviso of section 8(a)(3) as follows:

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5. Congress was very conscious of the mandatory nature of its own limitations on union security even while it accorded to the states options to permit or prohibit union security above and beyond its own limitations. *See, e.g.,* House Report No. 245 on H.R. 3020, 1 Leg. Hist. L.M.R.A. 325:

> "Agreements such as those that section 8(d)(4) permits are valid only if they are valid under the laws of any State in which they are to be performed, and by section 13 the United States expressly declares the subject of compulsory unionism one that the States may regulate concurrently with the United States, notwithstanding that the agreements affect commerce, and notwithstanding that the State laws limit compulsory unionism more drastically than does Federal law. It goes without saying that no State may invalidate, as to agreements affecting commerce, restrictions or conditions that the amended Labor Act will put upon compulsory unionism."

> "We considered the [right-to-work amendment] arguments very carefully in the committee and I myself came to the conclusion that since there has been for such a long time so many union shops in the United States, since in many trades it was entirely customary and had worked satisfactorily, I at least was not willing to go to the extent of abolishing the possibility of a union-shop contract. . . . I think it would be a mistake to go to the extent of absolutely outlawing a contract which provides for a union shop, requiring all employees to join the union, if that arrangement meets with the approval of the employer and meets with the approval of a majority of the employees and is embodied in a written contract." (Ibid 1420-1422)

The Ball-Byrd right-to-work amendment was defeated and the section 8(a)(3) proviso was left intact. (Ibid 1428) In summary, legislative history leaves nothing to the imagination. Section 8(a)(3) was adopted to control by federal law the act of original hiring. Congress rejected right-to-work policy as a matter of federal law but did preserve state option to allow or not to allow union security arrangements after 30 days of employment.

Evidently it seemed to the majority that vesting in section 14(b) the role of regulating hiring would provide a predicate to legitimize the application of Texas law to maritime workers as a furtherance of this discovered federal policy. And being without statutory language or legislative history to so recast section 14(b), the majority accomplished a verbal transition thus:

> "In short, if the congressional discussion on compulsory unionism could be said to have any single reference point, it is not job situs but the hiring process. And in our judgment the language of section 14(b) which looks to the 'execution or application' of the agreement requiring membership as a condition of employment refutes the notion that Congress was suddenly singularly concerned with the job situs of the employee rather than with the effects of such an agreement on men and women seeking employment in a mobile society." (App. 12a-13a)

Petitioners submit this is rhetoric which evaporates upon rereading. It does not connect section 14(b) and state law to the regulation of hiring and certainly does not support the expansive extraterritorial application of the Texas act in the name of promoting federal statutory policy. We repeat: If this is section 14(b) policy, courts must accord broader application to the laws of "right to work" states than to those other states. However bizarre this inference may be, it is an integral part of the decision below.

In fact, section 14(b) was inserted to preserve pre-existing law and to insure that the then new section 8(a)(3) would not be taken as a negation of state laws which go further. *Retail Clerks, etc. v. Schermerhorn*, 373 U.S. 746, 751 (1963). It was not inserted to expand the jurisdiction of states so they can protect hiring everywhere, as the minority opinion demonstrates. (App. 28a, Fn. 16)

Given the special congressional concern for emancipating the initial selection of employees from abuses, we can hardly attribute to Congress the intent to delegate the section 14(b) option to states to correct or not to correct the problem. Neither can we imagine that Congress intended to invest in "right-to-work" states special long-arm writs to regulate hiring in other states. But the opinion below well-nigh attributes these purposes to Congress.

5. Union security to the extent authorized by section 8(a)(3) is a mandatory subject of bargaining under section 8(a)(5) of the Act in the absence of a prohibiting state law. *NLRB v. General Motors Corporation*, 373 U.S. 734 (1963). The decision below is in conflict with the *General Motors* decision to the extent that it holds that the Act, especially section 14(b), favors state prohibition of union security arrangements. Congress would hardly have made union security a mandatory subject of bargaining while at the same time creating section 14(b) in order to further a federal policy of eliminating union security. The *General Motors* decision necessarily means that the Act is neutral whether or not a state prohibits union security beyond the limitatations of section 8(a)(3), and where it does not, the Act gives to employees the affirmative right to seek union security arrangements and compels the employer to bargain about them in good faith.

6. The majority attached little importance to the exclusively maritime situs and nature of the work. "[W]hat is the interest of the high seas in preventing application of the Texas law?", the Court asked. (App. 16a) But as the minority demonstrates, federal maritime and statutory law is pervasive in its regulation of the employment relationship aboard deep sea vessels, while state regulation stops at the water's edge. See, e.g., *Garrett v. Moore-*

McCormack, 317 U.S. 239, 246-248 (1942) (Pennsylvania state law is not applicable in action to set aside seaman's release); *The Arizona v. Anelich*, 298 U.S. 110, 122-123 (1936) (Common law defense of assumption of risk is not applicable under Jones Act); *Socony-Vacuum Co. v. Smith*, 305 U.S. 424, 430-431 (F.E.L.A. safety appliance rules are not appropriate to admiralty). As the minority states, there is no aspect of this employment relationship which Texas may properly control—except this novel injection of Texas "right to work" law into this labor contract. (App. 25a-27a) Thus, the majority did not make a weighty point by pointing out that Congress did not carve out an express exception for seamen in passing section 14(b). Rather, seamen working aboard ship already occupied an exceptional status under the maritime law and federal statutes and it is inconceivable that Congress intended section 14(b) to expand state law into a field entirely foreign to the states' normal field of operation. The consistent and traditional control by federal law of every phase of maritime employment relationships refutes the holding below that Mobil's contacts with Texas justify injecting state law into federal maritime affairs. (App. 31a)

7. The job situs test adopted by the NLRB is appropriate to this case and should not have been rejected by the majority. In administering the union shop election procedures, the Board has encountered multi-state situations in which employees of a single company performed their work in many states, some of which prohibited union security agreements. The Board designed appropriate bargaining units of employees according to the situs of their work, thereby applying the law of each state to the employees who worked in that state. One benefit of this test, according to the Board, is that it results in

the least amount of extraterritorial effect being given to the laws of one state as against those of another. *Northland Greyhound Lines, Inc.*, 80 NLRB 288 (1949). *Western Electric Co., Inc.*, 84 NLRB 1019 (1949). In the *Western Electric* case, the employer was headquartered in New York but its employees were mobile equipment installers who were frequently transferred from state to state and who, therefore, worked in right-to-work states from time to time. The Board rejected the claim that the New York location of employer's headquarters should make New York law applicable to all employees for union security purposes.

Thus, two sharp conflicts emerge between NLRB decisions and the opinion below. *First*, the Board adopted the job situs test in order to accord equal respect to the laws of all states and avoid extraterritoriality, while the decision below concludes that extraterritoriality is unobjectionable under section 14(b) (App. 13a-14a, Fn. 12), and, indeed, appropriate in order to further federal policy.[6]

Second, the Board adhered to the job situs test and refused to accord decisive weight to the location of employer's New York headquarters and contacts in the *Western Electric* case while the decision below makes the opposite choice on practically identical facts.

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6. It was an enormous assumption made by the Court that Texas intends these particular statutes to have extraterritorial effect. The Texas Supreme Court follows the rule of statutory construction that extraterritorial effect is not to be given statutes by implication. To the contrary, a state statute is presumed to have no extraterritorial effect unless a legislative intention to reach beyond the limits of the state is clearly expressed or indicated by its language, purpose, subject matter or history. *Marmon v. Mustang Aviation, Inc.*, (Tex.) 430 S.W.2d 182, reh. den. The Texas court cited and followed this Court's decision to the same effect in *Foley Bros. v. Filardo*, 336 U.S. 281 (1949). Nothing in the Texas statutes or their wording suggests a legislative intention to reach beyond the state's borders. (App. 1c) The state and its officials took no part in this case.

8. The decision is impractical and unrealistic. The declaratory judgment goes so far as to say that the application of the agency shop clause "to any or all of plaintiff's operations and employees contravenes the Texas statutes. . . ." As the minority opinion points out, it is not explained how Texas law can cover seamen who work aboard vessels which ply the high seas and 57% of whom are not even Texas residents. (App. 31a) While emphasizing the Texas residence of some of these seamen, the court disregards the out-of-state residence of most of them. The contacts between Texas and Mobil's headquarters in Beaumont, Texas, have little relevance to the work life of the employees. As the panel majority pointed out, the transfer of these headquarters from New York to Texas in 1962 had little effect on the seamen whose working location remained the same. (App. 12b) In this case, what difference would it make to the seamen if headquarters is transferred back to New York?

Furthermore, "headquarters" can be invidiously manipulated. Without significant effect on employees or their place of work employers can artificially concentarte management or administrative functions in right-to-work states in order to defeat the union security right of their employees who work in other states. Or, to put another case, companies and unions could agree that contract administration and grievance settlement would take place in states which authorize union security. Would anyone imagine that employees who work in right-to-work states could thus be subjected to union security? Here we see that when the shoe is applied to the other foot it will not fit. Obviously, the headquarters location of the employer accepted without reference to the work place of the men is not a rational measure for the application of section 14(b). On the other hand, the job situs test is the "logical distillation" as section 14(b) as Chief Judge Brown put it. (App. 34a)

9. Finally, Petitioners direct attention to the failure of the Court to refer the case to the NLRB under the doctrine of primary jurisdiction. 12 of the 14 judges rejected Petitioners' argument in this respect, but Chief Judge Brown and Judge Dyer thought the case is governed by *Southwestern Sugar & Molasses Co. v. River Terminals Corp.*, 360 U.S. 411, 421 (1959). We preserve the point for this court's consideration.

Plaintiff Mobil requested and needed only declaratory judgment, itself a discretionary remedy. The case requires an accommodation between sections 8(a)(3) and 14(b) as well as between federal and state law. The NLRB arsenal of weapons to deal with union security problems is complete[7] and "any person" may invoke its procedures under its rules. N.L.R.B. Rules and Regulations, Sec. 102.9.

At the very least the court should have had the benefit of the initial determination and analysis by the statutory agency entrusted with administration of the Act. We daresay the misinterpretation of legislative history which did occur would have been avoided, and the judges would have been materially assisted by having the views of the

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7. Before negotiation of a union security clause, NLRB has exclusive jurisdiction to rule upon the legality of a clause proposed in bargaining, *NLRB v. General Motors, supra*, and to prevent picketing to obtain an illegal clause, *Local 1625 Retail Clerks, etc. v. Schermerhorn, supra, on reargument*, 375 U.S. 96 (1963) at 105.

After execution of a contract, NLRB has jurisdiction to rule on the validity of a union security clause, *American Seating Co.*, 98 NLRB 800 (1952); *NLRB v. Television & Radio Broadcasting Studio Employees*, 315 F.2d 398 (C.A. 3, 1963), or to expunge an invalid union security clause, or to redress the discharge of an employee either under an invalid clause or under unlawful circumstances, *NLRB v. Hribar Trucking, Inc.*, 337 F.2d 414 (C.A. 7, 1964); *Busch Kredit Jewelry Co.*, 108 NLRB 1214 (1954); *Film Editors*, 124 NLRB 842 (1959); *Argo Steel Construction Co.*, 122 NLRB 1077 (1959); *Associated Machines, Inc.*, 114 NLRB 390 (1955), *enforced* 239 F.2d 858 (C.A. 6, 1956).

NLRB before them. The point has been recognized by this Court in a closely related situation: "There is much force in the argument that the assessment of any union security arrangement for the purposes of §§ 7, 8 and 14(b), when there is significant doubt about the matter, is in initially a task for the Board, so that it may come to this court with the benefit of the affected agency's views . . ." per White, J. in *Retail Clerks Int. Ass'n. v. Schermerhorn,* 375 U.S. 96 (1963).

The courts below not only disregarded relevant NLRB decisions and bypassed the NLRB in a complicated case of first impression, but they did so upon what they regarded as an incomplete record. (App. 21a)

The result is that further refinements in the ruling, if any are appropriate, have been precluded. Indeed, by invalidating the union security clause as to "any or all" of the seamen, the declaratory judgment has also precluded in practical terms further exploration of the problem in collective bargaining.

We suggest to the Supreme Court that further consideration of the primary jurisdiction question is appropriate.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

MOBIL OIL CORPORATION et al.,
Plaintiffs-Appellees,

v.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO et al.,
Defendants-Appellants.

No. 72-3272.

United States Court of Appeals,
Fifth Circuit

Nov. 8, 1974.

Judgment of district court affirmed.

Ainsworth, Circuit Judge, filed a dissenting opinion in which Brown, Chief Judge, and Dyer, Simpson, Morgan and Roney, Circuit Judges, joined.

Brown, Chief Judge, filed a dissenting opinion in which Dyer, Circuit Judge, joined.

Appeal from the United States District Court for the Eastern District of Texas.

Before BROWN, Chief Judge, and WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, AINSWORTH, GODBOLD, DYER, SIMPSON, MORGAN, CLARK, RONEY and GEE, Circuit Judges.*

THORNBERRY, Circuit Judge:

Mobil Oil Corporation Marine Transportation Department, Gulf-East Coast Operations [Company] and the Oil,

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* Judge Goldberg did not participate in the consideration of this case.

Chemical and Atomic Workers International Union AFL-CIO and Maritime Local No. 8-801 of that Union [Union] entered into a collective bargaining agreement containing an agency shop clause. Shortly thereafter the company brought suit in federal district court for a declaratory judgment under section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), (c), and 28 U.S.C. § 2201, hoping that the court would find the clause violative of the Texas right to work law and thus void and unenforceable.

After a full evidentiary hearing, the district court concluded that the Texas law did apply to this employment relationship and did render the agency shop provision invalid. On appeal, a panel of this court held that a justiciable controversy existed, that jurisdiction properly vested in the district court, and that there was no abuse of discretion by that court in declining to defer to the NLRB. But on the substantive issue the panel concluded that the district court had erred and that the agency shop clause is valid and enforceable with respect to all employees covered by the collective bargaining agreement. The panel held that the Texas right to work law does not apply to this employment relationship because these employees are not employees of Texas or of any other state, but are rather seamen whose job site is on the high seas. Because of the exceptional importance[1] and the unique nature of the question presented, we granted rehearing

1. Five of the six states within the circuit have enacted right to work laws. Fla. Const. art. I, § 6; Ala. Code tit. 26, § 375 (1958); Ga. Code Ann. §§ 54-901 to 54-909 (1961); Miss. Code Ann. § 71-1-47 (1972); Vernon's Tex. Rev. Civ. Stat. Ann. art. 5154a, § 8a, art. 5154g, § 1, art. 5207a, § 2 (1971). All six states have coastal areas along which a large number of maritime workers are employed. 11 Hou. L. Rev. 709, 715 (1974).

en banc to consider the question of the applicability of the Texas right to work law.[2]

I.

The parties to this suit, the district court, and the original panel approached the issue presented by analyzing this employment relationship in terms of its contacts with the state of Texas and other jurisdictions. It is conceded by all that employer/employee contacts with the state of Texas far outweigh contacts with any other *state*, and the evidence supporting that conclusion is neither conflicting nor ambiguous.

The company operates eight oceangoing tankers which move principally between the state of Texas and the state of New York along the East and Gulf Coasts. Since 1962, the headquarters of the company has been located in Beaumont, Texas. All personnel and payroll records are maintained there; all payroll checks are written and mailed from the Beaumont offices; all state and federal taxes are deducted from the seamen's wages in Beaumont; all monthly checkoffs of Union dues for all seamen is performed in Texas; and all grievances filed on the approved grievance forms by the seamen are submitted to and considered by the company's manager at his office in Beaumont, pursuant to the collective bargaining agreement. The state of Texas is the only state administering unemployment compensation for the company's seamen.

The company employs 289 unlicensed seamen; 123 of the 289 have reported Texas as their state of residence;

2. We affirm the panel's threshold determinations of justiciability and jurisdiction for the reasons expressed in the panel opinion. *See* 5th Cir., 483 F.2d 603.

and 152 of the 289 have requested the company to list Beaumont as their shipping port. All actual hiring of seamen occurs in Texas. While approximately 40% of the seamen first make application in New York and 60% make application in Beaumont, the final hiring decision is made only in Beaumont. As many as 60% of the applicants actually come from the Texas labor force. Furthermore, all terminations of seamen are finalized in Beaumont as a result of decisions made at the Beaumont headquarters. The evidence suggests that from the seaman's first encounter with the company to his last, the Beaumont headquarters is constantly in the picture.

The above contacts demonstrate that the state of Texas is intimately involved with this employment relationship. And the district court was clearly correct in its finding that a more substantial part of the administration and performance of the collective bargaining agreement occurs in Texas than in any other state.[3] We think it not insignificant to note that this "justiciable controversy" arose in Beaumont, for it was in the context of the hiring process there that the Union and the company began this battle.[4]

3. The only other state which arguably has any interest in this employment relationship is New York. Of the company's seamen, 60 have reported New York as their state of residence. The collective bargaining agreement was first negotiated and executed there. That agreement was prepared in final form and re-executed in Texas. The agreement does not contain a choice-of-law provision. On this record, it is undisputed that Texas has quantitatively and qualitatively greater contacts with this employment relationship than does any other state, including New York.

4. The company dealt the first blow by notifying all new seamen that it would not enforce the agency shop provision. The union response was sharp: "As far as this Union is concerned, any employee in our Division of Mobil must either join our Union or pay dues to the Union. We intend to exercise our right to have the employment of any unlicensed seaman terminated who does not join or pay dues to the Union.

The panel, however, believed that the predominance of Texas contacts with this employment relationship was not decisive. Instead, the panel concluded that the determinative factor in deciding whether the Texas law is applicable is job situs. The record indicates that the seamen spend 80% to 90% of their working time on the high seas. Each seaman works roughly a 120 day cycle consisting of 90 days aboard ship and 30 days ashore "on vacation" during which shore time he continues to be an employee of the company and to receive wages. The panel's theory is that, with so much of a seaman's working time reserved for the high seas, the Texas law, and for that matter the law of any state, is rendered inapplicable. The panel does not explain, however, why job situs is the singularly most significant, indeed the decisive, factor.[5]

[1] Rather than adopt the panel's limited approach, we choose to weigh all of the contacts in the context of our national labor policy. We disagree with the panel's conclusion that job situs has some talismanic quality. We would agree with the panel opinion that the district court's finding that a more substantial part of the adminis-

5. Two 1949 NLRB decisions furnish the focus of the panel's argument. In Western Electric Co., Inc., 84 NLRB No. 111, and Northland Greyhound Lines, Inc., 80 NLRB No. 60, the Board was called upon to determine appropriate bargaining units for employees who performed their work in many states, some of which prohibited union security agreements. The Board recommended separate units which would be subject to the laws of the respective states according to the employee's job situs. The issue raised in those cases, however, was not whether some state law applied to the employment relationship but *which* state law applied, thus aborting the question with which we are now faced. As the panel noted, neither the Board nor the court has ever been faced with the precise issue now before us. *See* Seafarers International Union of North America, Atlantic, Gulf, Lakes & Inland Waters District et al., 202 NLRB No. 91; Mobil Oil Corp. v. Oil, Chemical and Atomic Workers Int. U., 5th Cir. 1973, 483 F.2d 603, 608.

tration and performance of the collective bargaining agreement occurs in Texas than in any other state is not decisive. The number of contacts is a highly relevant consideration, but the true importance of these contacts is to be understood not in a quantitative vacuum but in the qualitative background furnished by the Congress.

Whether the agency shop clause in this collective bargaining agreement is valid or not depends entirely upon whether the Texas right to work law applies to this employment relationship.[6] In determining whether the Texas law is applicable, we must decide whether it was the intent of Congress in writing section 14(b) to permit a state to apply its right to work law to an employment relationship which has contacts with the state as described by the evidence presented to the district court.

Our task is made more difficult by the fact that there is nothing in the legislative history of the Taft-Hartley Act which expressly answers our question one way or the other. Nevertheless, we must determine as best we can what Congress would have intended on this point had it been presented for their explicit consideration.[7] Our job is not to add up all of the contacts and to decide which jurisdiction has "the most." Our task is to discern whether

6. It is undisputed that the agency shop is a form of union security which is proscribed by the Texas law, and the Texas Attorney General has so ruled. Opinion WW-1018.

7. "The difficulties of so-called interpretation arise when the Legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the Legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present." John Chipman Gray, Nature and Sources of the Law: Statutes, p. 173 (1921 ed.)

application of the Texas right to work law would be in furtherance of the Taft-Hartley Act's expressed purposes.[8] *See* National Woodwork Mfrs. Ass'n. v. NLRB, 1967, 386 U.S. 612, 87 S.Ct. 1250, 18 L.Ed.2d 357; Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 1968, 389 U.S. 463, 468, 88 S.Ct. 643, 646, 19 L.Ed.2d 705; NLRB v. Metallic Bldg. Co., 5th Cir. 1953, 204 F.2d 826, 828. And in arriving at a just, proper, and congressionally authorized conclusion, we invoke the eclectic approach of Chief Justice Marshall:

> Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived . . .

United States v. Fisher, 1805, 2 Cranch (6 U.S.) 358, 386, 2 L.Ed. 304, 313; *see also* United States v. Dickerson, 1940, 310 U.S. 554, 562, 60 S.Ct. 1034, 1038, 84 L.Ed. 1356.

[2] Having done so, we conclude that it was not the intent of the Congress to prevent Texas from applying its right to work law in the context of this employment relationship. Indeed, in our judgment, application of the Texas law would be in furtherance of our national labor policies. For the reasons expressed below, we hold that the federal labor legislation, the predominance of Texas contacts over any other jurisdiction, and the significant interest which Texas has in applying its right to work law

8. "[I]t is one of the surest indexes of a mature and developed jurisprudence . . . to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." Judge Learned Hand, in Cabell v. Markham, 2nd Cir. 1945, 148 F.2d 737, 739, aff'd, 326 U.S. 404, 66 S.Ct. 193, 90 L.Ed. 165; *See also* Federal Deposit Ins. Corp. v. Tremaine, 2nd Cir. 1943, 133 F.2d 827, 830.

to this employment relationship warrant application of the Texas law and, consequently, invalidation of the agency shop provision.

II.

We begin with "the language of the statute itself." Jones v. Alfred H. Mayer Co., 1968, 392 U.S. 409, 420, 88 S.Ct. 2186, 2193, 20 L.Ed.2d 1189. Sections 7 and 8(a)(3) of the Labor Management Relations Act, 29 U.S.C. §§ 157, 158(a)(3), specifically authorize employers and labor organizations to enter into union shop agreements by whose terms membership in a union after a short waiting period, is required as a condition of employment.[9] The Supreme Court has interpreted these sections to authorize an agency shop, a form of union security conditioning employment on the payment of

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9. 29 U.S.C. § 157:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

29 U.S.C. § 158:

"(a) It shall be an unfair labor practice for an employer—

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . ."

regular union dues and initiation fees in lieu of actual union membership. NLRB v. General Motors Corp., 1963, 373 U.S. 734, 738-739, 83 S.Ct. 1453, 10 L.Ed. 2d 670; Retail Clerk's Inter. Ass'n v. Schermerhorn [*Schermerhorn I*], 1963, 373 U.S. 746, 751, 83 S.Ct. 1461, 1464, 10 L.Ed.2d 678.

In the same stroke, section 8(a)(3) was redrafted to prohibit the closed shop which its predecessor section, section 8(3) of the National Labor Relations Act, had permitted. H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60, 1 Leg. Hist. L.M.R.A. 545, U.S. Code Cong. Serv. 1947, p. 1135. The closed shop differs from the union shop in only one regard: the closed shop requires that the job applicant be a member of the union before he is hired 11 Hou. L. Rev. 709, 710 n. 7 (1974).

Section 14(b) of the Act, 29 U.S.C. § 164(b), provides:

> Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

By enacting this provision, Congress desired to "make certain" that section 8(a)(3) of the Act could not "be said to authorize arrangements of this sort [compulsory unionism] in States where such arrangements were contrary to the State policy." H.R. Conf. Rep. No. 510, supra, 1 Leg. Hist. L.M.R.A. at 564; *Schermerhorn I*, supra; U.S. Code Cong. Serv. 80th Cong., 1st Sess. 1947, p. 1135. The language of section 14(b) as well as its legislative history suggests an intent on the part of the Congress

to save to the states the right to prohibit the practical equivalents of compulsory unionism, including the agency shop. *Schermerhorn I*, supra; Retail Clerks Inter. Ass'n v. Schermerhorn, 1963, 375 U.S. 96, 98, 84 S.Ct. 219, 220, 11 L.Ed.2d 179 [*Schermerhorn II*]; NLRB v. Houston Chap., Asso. Gen. Con. of America, Inc., 5th Cir. 1965, 349 F.2d 449, 453.

The national labor policy expressed in these sections of the Taft-Hartley Act is one which directly authorizes union shop arrangements, but only in those states which have not passed the right to work laws. In a sense, a conflict between state and federal law may thereby arise

> but it is a conflict sanctioned by Congress with directions to give the right of way to state laws barring the execution and enforcement of union-security agreements . . .

Schermerhorn II, supra, 375 U.S. at 103, 84 S.Ct. at 222, 11 L.Ed.2d at 184. In essence, the congressional judgment is that state right to work laws are in harmony with, and part of, the national labor policy.

The district court focused its attention on the "application" of the agency shop clause requiring the payment of dues and fees "as a condition of employment in" Texas. Believing that the collective bargaining agreement received its most significant application in Texas, the district court concluded that the Texas law applied. The panel, however, began with the premise that state right to work laws are applicable only to employees of those particular states and concluded that the employees in this case are not for the purpose of their collective bargaining agreement employees of Texas or any other state because

of their job situs. Fortunately, Congress has given us some indication of the approach it would favor.

When the Congress prohibited the closed shop while permitting the union shop in the Taft-Hartley Act, the Congress was demonstrating its concern with the process by which men and women were hired. As conceived by that legislative body the closed shop enabled union hiring halls to control absolutely the pool of labor available to an employer. H.R. Rep. No. 245, 80th Cong., 1st Sess., 1 Leg. Hist. L.M.R.A. 295, 300. The hiring decision was, in effect, made by the union hiring hall, for the employer never saw a job applicant unless the applicant had been referred by the union, and of course, only union members were referred. The Congress singled out the maritime industry as a serious problem area.[10] The legislative history of the Act exhibits an express intent to give to the employer some measure of freedom in the hiring process. *See* H.R. Rep. No. 245, supra; *see also, e. g.*, 93 Cong. Rec. A1297 (1947) (remarks of Representative Gerald Landis) and 93 Cong. Rec. A2011 (1947) (remarks of Representative Hugh Meade), infra at note 11. The

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10. ". . . It is clear that the closed shop which requires pre-existing union membership as a condition of obtaining employment creates too great a barrier to free employment to be longer tolerated. In the maritime industry and to a large extent in the construction industry union hiring halls now provide the only method of securing employment. This not only permits unions holding such monopolies over jobs to exact excessive fees but it deprives management of any real choice of the men it hires. Extension of this principle to licensed deck and engine officers has created the greatest problems in connection with the safety of American vessels at sea. . . .

"Under the amendments which the committee recommends, employers would still be permitted to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired . . ." S. Rep. No. 105, 80th Cong., 1st Sess., 1 Leg. Hist. 412-413.

union shop agreement permits an employer to hire a person who has not, at or before the moment of hiring, joined the union. With the proscription of the closed shop, union hiring halls are now required to refer job applicants on a nondiscriminatory basis, so that an employer may consider nonunion applicants on an equal basis with union applicants. NLRB v. Houston Chap., Asso. Gen. Con. of America, Inc., supra. In sort, if the congressional discussion on compulsory unionism could be said to have any single reference point, it is not job situs but the hiring process.[11] And in our judgment, the language of

11. ". . . For the last 14 years, as a result of labor laws ill-conceived and disastrously executed, the American workingman has been deprived of his dignity as an individual. He has been cajoled, coerced, intimidated, and on many occasions beaten up, in the name of the splendid aims set forth in section 1 of the National Labor Relations Act. His whole economic life has been subject to the complete domination and control of unregulated monopolists. He has on many occasions had to pay them tribute to get a job. He has been forced into labor organizations against his will . . . He has been denied any voice in arranging the terms of his own employment. . . ." H.R. Rep. No. 245, supra, 1 Leg. Hist. L.M.R.A. 295.

". . . The bill bans the closed shop. Under carefully drawn regulations it permits an employer and a union voluntarily to enter into an agreement requiring employees to become and remain members of the union a month or more after the employer hires them or after the agreement is signed . . . Under this clause employers may select their own employees . . ." *Id.*, at 300.

". . . *Section 8(a)(3).*—In the language of the present act, this section forbids employers to discriminate in regard to the hire and tenure of employees or any term or condition of employment to encourage or discourage membership in any labor organization. Consistently with court decisions, the bill expressly makes this clause applicable to persons seeking employment, thereby banning 'black lists.' " *Id.*, at 321.

"Section 8(a)(3): The proviso to this section has been redrafted to abolish what is narrowly termed the 'closed shop.' An employer is permitted to make agreements requiring membership in a union as a condition of employment applicable to employees in a given bargaining unit 30 days after an employee is hired. . . " S. Rep. No. 105, 80th Cong., 1st Sess., 1 Leg. Hist. 426.

section 14(b) which looks to the "execution or application" of agreements requiring membership as a condition of employment refutes the notion that Congress was suddenly singularly concerned with the job situs of the employee rather than with the effects of such an agreement on men and women seeking employment in a mobile society.[12] The language and history of section 14(b)

"I prefer the union shop to the closed shop because the employer is free to hire nonunion workers and is the sole judge of the qualifications of the applicants. Union membership may be acquired immediately following employment or within a stipulated period thereafter . . ." 93 Cong. Rec. A1297 (1947) (remarks of Representative Gerald Landis).

"The closed shop would be outlawed.

"But a union shop would be authorized under certain circumstances. Under the union shop, an employer may hire anyone of his choosing, but that person must become a member of the shop union within a given period, usually 30 days . . .

"Under this provision an employer may select his own employees and the employee has 30 days to decide whether he or she cares to join the union . . ." 93 Cong. Rec. A2011 (1947) (remarks of Representative Hugh Meade).

See also Cox, The Labor Management Relations Act, 61 Harv. L. Rev. 274, 297 (1948).

12. H.R. 3020, as it passed the House, permitted union shop agreements "if such provisions are not in conflict with the law of any State in which the agreement is to be carried out . . ." *See* 1 Leg. Hist. L.M.R.A. 183-84. The original House version of the provision which found its final form in § 14(b) was unclear as to the scope of a state's power over union security agreements. *See* 1 Leg. Hist. L.M.R.A. 207-08. The House Committee Report on H.R. 3020, however, interpreted the provision as authorizing union shop agreements "only if they are valid under the laws of any State in which they are to be performed."

During the debate on the House version of the bill, passing reference was made to the McCarren Act, 15 U.S.C. § 1011 et seq., in which Congress declared that the activities of insurance companies were subject to state regulation, notwithstanding the interstate and even international character of the insurance business. *See* 93 Cong. Rec. 3621 (1947) (remarks of Representative Case). While the legislative history of the McCarran Act suggests an intent to limit the extraterritorial application of state laws, there is nothing to that effect in the legislative history of the Taft-Hartley Act. Moreover,

suggest that a state may apply its right to work law whenever the state has a significant interest in the process by which a union security agreement is applied. No one disputes the fact that this agency shop agreement receives its application in Beaumont, Texas. Indeed, it is the company's resolute refusal to apply the agreement in Beaumont, Texas, that has caused this suit.

The preamble to the Texas right to work law records the legislative judgment that because unions exercise great influence over the economic well-being and freedom of the Texas labor force, the state has an important interest in removing union coercion from the hiring process.[13]

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the McCarran Act has been interpreted to permit regulation by the state in which the insurance practice has its "impact" or "operative force." *See, e.g.*, FTC v. Travelers Health Ass'n, 1960, 362 U.S. 293, 301, 80 S.Ct. 717, 722, 4 L.Ed.2d 724; United States v. Chicago Title and Trust Co., N.D. Ill. 1965, 242 F.Supp. 56, 66; *see also* American Hospital and Life Ins. Co. v. FTC, 5th Cir. 1957, 243 F.2d 719, 724, aff'd, 1958, 357 U.S. 560, 78 S.Ct. 1260, 2 L.Ed.2d 1540; State Bd. of Insurance v. Todd Shipyards Corp., 1962, 370 U.S. 451, 82 S.Ct. 1380, 8 L.Ed.2d 620; Prudential Ins. Co. v. Benjamin, 1946, 328 U.S. 408, 66 S.Ct. 1142, 90 L.Ed. 1342. And the Supreme Court has permitted state regulation of maritime insurance contracts which clearly have an extraterritorial effect. Wilburn Boat Co. v. Fireman's Fund Insurance Co., 1955, 348 U.S. 310, 75 S.Ct. 368, 99 L.Ed. 337; Toomer v. Southwest Casualty Insurance Co., S.D. Tex. 1964, 231 F.Supp. 542, 543; Irwin v. Eagle Star Insurance Co., 5th Cir. 1972, 455 F.2d 827, 829-830.

13. Vernon's Ann. Civ. Stat. art. 5154a, § 1, provides in part:
"Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist and non-unionist, must be protected. The right to work is the right to live." *See* Lunsford v. City of Bryan, 1957, 156 Tex. 520, 297 S.W.2d 115; Texas Federation of Labor v. Brown & Root, Inc., 246 S.W.2d 938 (Tex. Civ. App.—1952, writ ref'd n.r.e.); Sheet Metal Workers Local No. 175 v. Walker, 236 S.W.2d 683 (Tex. Civ. App.—1952, writ ref'd).

Each of the Texas right to work provisions expresses a concern with that process. Article 5207a, § 2, provides: "No person shall be denied employment on account of membership or nonmembership in a labor union." Article 5154a, § 8a provides: "It shall be unlawful for any labor union, . . . to collect . . . any fee . . . whatsoever, as a work permit or as a condition for the privilege to work from any person not a member of the union. . . ." And, lastly, Article 5154g, § 1, provides that ". . . the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union." Again, if any single legislative focus can be discerned from the Texas provisions, it is not job situs or the place of job performance but the hiring process. Thus one triggering point for the application of these provisions is hiring within the state. As indicated earlier, this is consistent with the language and intent of section 14(b).

If, as we have noted, the Texas laws were enacted to afford the Texas labor force protection from compulsory unionism, the fact that as many as 60% of the job applicants come from the Texas labor force gives Texas good reason for applying its right to work provisions. But the state's interest goes far beyond its predominant association with the hiring process and its numerous other contacts with this employment relationship which have already been listed. During the one-fourth of the year when the employees are "on vacation" in Texas, they presumably have homes and families; they pay taxes; they send their children to school; they eat, sleep, and move about; they act like other citizens of the state. In short, they are precisely the people whom the Texas law was designed to protect.

The high seas definitely have contact with the employees, but what is the interest of the high seas in preventing application of the Texas law? How is some important non-Texas, national, or international policy furthered by refusing to apply the Texas law? The fact that maritime work is interstate, or even international, in character does not imply that the Texas law is inapplicable since federal regulation in these matters is predicated upon interstate commerce. No one who studies the legislative history of section 14(b) can seriously argue that Congress intended to permit the states to prohibit compulsory unionism only in those instances where interstate commerce was not affected.[14] Consequently, there is no uniformity principle at stake here since a national or international union may have a union shop in one state and find that arrangement prohibited in another by the state law.[15]

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14. ". . . [B]y section [14(b)] the United States expressly declares the subject of compulsory unionism one that the State may regulate . . . notwithstanding that the agreements affect commerce . . ." H.R. Rep. No. 245, 80th Cong., 1st Sess., 1 Leg. Hist. L.M.R.A. 325.

"My understanding is that the basis of this legislation, constitutionally speaking, is the commerce clause of the Constitution, authorizing the Federal Government to regulate commerce between the states. Throughout the entire history of such legislation that has been its basis.

"This measure does not affect wholly intrastate commerce and persons who are engaged in intrastate commerce, rather than interstate commerce. The provision of the measure which exempts any State from the operation of its provisions, if such State has outlawed the closed shop, therefore in effect adopts the State as the agency through which the regulation of interstate commerce shall take place, insofar as the closed shop is regulated." 93 Cong. Rec. 6679 (1947) (remarks of Senator Barkley); *see also* 93 Cong. Rec. 6614 (1947) (remarks of Senator Morse) and 93 Cong. Rec. 3621-22 (1947) (remarks of Representatives Barden, Hoffman, Jennings, and Case).

15. "By making the matter one of state law, Congress has not only authorized multiformity on the subject, but practically guaranteed it." Amalgamated Ass'n of St., E.R. & M.C. Emp. v. Lockridge, 1971, 403 U.S. 274, 317, 91 S.Ct. 1909, 1933, 29 L.Ed.2d 473, 500 (Mr. Justice White, dissenting).

". . . [I]n one important area the bill expressly abandons the principle of uniform application of national policy under Federal law. The bill's stated policy of preserving some degree of union security would be abdicated in all States where more restrictive policies exist. In other respects the bill makes clear that Federal policy would govern insofar as activities affecting commerce are concerned. This is not only an invitation to the States to distort national policy as they see fit, but is a complete forsaking of a long-standing constitutional principle." President Truman's Veto Message, 93 Cong. Rec. 7500 (1947).

The panel opinion suggested that allowing Texas to apply its right to work law here would allow an employer to make an "arbitrary choice," could produce "bizarre consequences," and could defeat the purposes of sections 7, 8, or 14(b) of the Act. On the contrary, as the legislative history indicates, allowing Texas to apply its laws here is in furtherance of the national labor policy expressed in the Act and in furtherance of the Texas legislative judgment. Furthermore, the panel's fear that employers might choose headquarter locations in states with right to work laws and thereby defeat national labor policy is, on this record, unfounded. First, the employer's headquarters is not the decisive factor, any more than job situs is. To reiterate, we have chosen to weigh all of the employer and employee contacts in the context of our national labor policy. Secondly, the Union has never even alleged that Mobil moved to Texas in order to seek the shelter of the Texas right to work law. We will have time enough to consider that factor in the proper case. We should note, however, that employers may set up their operations anywhere they choose, incurring the reponsibilities and gaining the advantages of that locale as they do so. The Union has directed us to no language in

section 14(b) or its legislative history which suggests that a company cannot freely choose to establish a substantive enterprise in a right to work state for the purpose of obtaining the benefit of the state's law.

It is the antithesis of the method we use here to permit an employer to make a truly arbitrary choice of the state law to be applied. The applicability of a state right to work law will depend upon whether such application would further the policies and purposes of our national labor laws. For example, where an employer has artificially constructed its operations or its hiring process in such a way that the substance of its activities occurs in and the greatest part of its labor force comes from a non-right to work jurisdiction while a pro forma final hiring decision is made in a right to work state, application of the state's right to work law would be contrary to the national labor policy. We are not faced with that circumstance here.

Moreover, we see no bizarre consequences flowing from the method used or the result reached today. Yet refusing to allow Texas to apply its law here would create the bizarre consequence of exempting the maritime industry from the operation of section 14(b). We have found nothing in the legislative history or the language of any present labor legislation, and the Union has directed us to none, which suggests an intent on the part of the Congress to create a special rule for maritime workers. On the contrary, the legislative history of the Taft-Hartley Act indicates that Congress was aware of the problems in the maritime industry caused by compulsory unionism and sought to deal with them. See S. Rep. No. 105, 80th Cong., 1st Sess., 1 Leg.Hist. 412-413; footnote 9, supra.

In the past, when Congress has decided to supersede section 14(b) and state right to work laws, it has done so expressly. Prior to 1951, the Railway Labor Act, 45 U.S.C. § 151 et seq., prohibited union shop agreements. But in 1951, Congress amended the Act to permit carriers covered by the law and their employees to enter into union shop agreements

> [n]otwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, *or of any State*.

45 U.S.C. § 152, subd. 11 (emphasis added). Fully aware of the Taft-Hartley Act and its section 14(b), Congress used express language in the 1951 amendment precisely to defeat application of state right to work laws. Railway Employees' Dept. v. Hanson, 1956, 351 U.S. 225, 232, 76 S.Ct. 714, 718, 100 L.Ed. 1112; *see also* Sams v. Brotherhood of Railway and Steamship Clerks, 4th Cir. 1956, 233 F.2d 263, 264; Inter. Ass'n of Machinists v. Sandsberry, Tex. Civ. App. 1954, 277 S.W.2d 776, 780-781, aff'd, 1956, 156 Tex. 340, 295 S.W.2d 412, cert. denied, 1957, 353 U.S. 918, 77 S.Ct. 669, 1 L.Ed.2d 665. In our judgment, this instance of congressional action demonstrates that state right to work laws are not to be ignored unless the language or legislative history of the federal law permits such a course.[16] Railway Employees' Dept. v. Hanson, supra. State prohibition of compulsory unionism is a "congressional dispensation of grace, not the imperious right of a state," and thus Congress has always had the power to exempt seamen from

16. For the history of the Railway Labor Act and the 1951 amendment, *see* Inter. Ass'n of Machinists v. Street, 1961, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141; Railway Employees' Dept. v. Hanson, supra.

the operation of state right to work laws. Sea PAK v. Industrial, Technical & Pro. Emp., Natl. Martime Union, S.D. Ga. 1969, 300 F. Supp. 1197, 1201, aff'd, 5th Cir. 1970, 423 F.2d 1229, aff'd, 1971, 400 U.S. 985, 91 S.Ct. 452, 27 L.Ed2d 434; Railway Employees' Dept. v. Hanson, supra. But it has chosen not to do so.

If we were to carve out an exception for seamen here, in the absence of any suggestion to do so from Congress, we would be encroaching on the legislative authority. That course of action, in spite of Justice Cardozo's frank observation that judge-made law is "one of the existing realities of life," is beyond our constitutional prerogatives. *See* Cardozo, The Nature of the Judicial Process (1921 ed.), p. 10.

III.

[3] Alternatively, the Union contends that it is improper to strike out the agency shop clause in its entirety from the collective bargaining contract since some of the seamen have greater contacts with states other than Texas, states without right to work laws. The Union asks that we fashion a rule which renders the Texas right to work law inapplicable to those employees who have greater contacts with non-right to work states than with Texas. We decline the Union's invitation for two reasons.

The agency shop clause in the collective bargaining contract states:

> For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date.

This clause unambiguously demands that all employees hired join the union or pay the required fees. The clause makes no distinction between job applicants who are to be protected by the Texas law and those who are not. As the panel majority noted, we cannot rewrite the contract to reflect these allegedly distinguishable classes.[17]

Secondly, even if we could rewrite the contract, on this record we are unwilling to hold that there is an identifiable group of employees who are not subject to the Texas law. The Union's brief admits that "the record before the court was insufficient to enable the court" to authorize partial application of the agency shop provision. Since we are not the fact-finders in the judicial process, we have no basis for implementing the Union's alternative request.

IV.

We have attempted a multi-dimensional analysis of the question presented for our disposition. On one level we have examined this employment relationship in terms of its contacts with the state of Texas and other jurisdictions. On another we have studied Congress' actions in passing the Taft-Hartley Act and the 1951 amendment to the Railway Labor Act in order to give meaning and context to the undisputed contacts. On still a third level we have scrutinized the interests of different jurisdictions in applying their laws to this employment relationship.

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17. *See* Perry Coal Co. v. NLRB, 7th Cir. 1961, 284 F.2d 910, 914; Lewis v. Quality Coal Corp., 7th Cir. 1959, 270 F.2d 140, 142; Fentress Coal & Coke Co. v. Lewis, 6th Cir. 1959, 264 F.2d 134, 135-136; NLRB v. News Syndicate Co., Inc., 2nd Cir. 1960, 279 F.2d 323, 328.

The resulting matrix offers a clear picture. Texas is intimately involved with this employment relationship. Texas has a more significant interest in applying its law than does any other jurisdiction. And the federal labor legislation suggests a congressional intent to allow Texas to apply its law, rather than to exempt the maritime industry from the operation of section 14(b). Having exhausted, as best we can, the reality before us, we are faced with but one result.

The judgment of the district court is affirmed.

AINSWORTH, Circuit Judge, with whom BROWN, Chief Judge, and DYER, SIMPSON, MORGAN and RONEY, Circuit Judges, join, (dissenting).

The question for decision is important and of first impression: Whether Texas' right-to-work statutes are applicable to the agency shop clause in a collective bargaining agreement involving mobile maritime employees—in this case, seamen employed on vessels operating on the high seas, whose work is performed entirely outside the State of Texas.[1]

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1. The highly controversial nature of so-called right-to-work laws is well known. No subject of labor relationship between employers and unions causes greater bitterness. Without attempting here to take sides on this troublesome issue, a few of the pros and cons will serve to demonstrate the heat which is engendered when the subject of such laws is raised.
For example, the "free rider" issue is hotly disputed:

> The unions claim that the worker who refuses to join the union is a free rider, since the union is obliged by law to bargain for the entire work force. The nonmember gets all the benefits of union representation without paying dues. Management retorts that the nonunion member under a right-to-work law is not a free rider, but a forced rider, since the union demands that it bargain for the entire work force. The union, in turn, maintains

The majority concedes that neither the National Labor Relations Board nor the Court has ever been faced with the precise issue before us and that nothing in the legislative history of the Taft-Hartley Act expressly answers

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> that the law must provide, as it does, for the union to represent all workers, union and nonunion, for if each worker were able to bargain individually, the employer could discriminate against the union by maintaining two wage scales—one for the union and a higher one for nonunion workers. Under this arrangement it would not be long before the union would be mustered out of the plant.
>
> Once again, the important consideration is not whether the nonunion worker is a free rider or a forced rider, but what the workers believe the case to be. When nonunion employees work side by side with union employees there is bound to be friction if the union workers believe the nonunion workers are free riders. This friction runs counter to the aim of our national labor policy, which places industrial stability as its prime objective.

Marshal, "Right-to-Work," Pro and Con, 17 Lab. L.J. 131, 136-137 (1966). As to more general aspects of the controversy, *see also* Dempsey, The Right-to-Work Controversy, 16 Lab. L.J. 387, 388 (1965), as follows:

> An analysis of the campaigns to pass right-to-work laws usually shows that there is a vast difference of viewpoint on the interpretation of the meaning of these laws between opponents and proponents of the laws. Before the public, the advocates of the right-to-work laws take what might be called a contractual viewpoint. They aim to prevent a clause in the labor management contract which would make membership in a union a condition of employment. In their minds, the issue is as simple as that. To make a man become a union member or forfeit his job or right to work is regarded as unAmerican and dictatorial. In fact, according to this view, unions would be stronger the more voluntary they were.
>
> The opponents of the right-to-work laws marshall their arguments based not on the contractual approach but on what might be called the integral viewpoint of the law. According to the union, collective bargaining, unionism and union security (closed shop or union shop) are a unity. An attack on one is an attack on all. Moreover, union security usually involves at least three additional activities: organization, collection of dues and some form of job control. The union in its campaign to stop these laws usually claimed that their true purpose was to restrict some or all of these activities.

our question. It also concedes that the district court's finding that a more substantial part of the administration and performance of the collective bargaining agreement occurs in Texas than in any other state is not decisive and that the number of Texas contacts, while relevant, is likewise not determinative. It proceeds nevertheless to "weight all of the [Texas] contacts in the context of our national labor policy" and devotes the greater part of its opinion to an academic dissertation on our national labor policy, congressional intent and the benefits foreseen by Congress in banning the closed shop, thereby allowing a greater measure of freedom to both employee and employer in the hiring process. The treatise, though interesting, is not relevant to the issues here.

There is no dispute about what Congress did when it enacted the Taft-Hartley Act and included therein section 14(b) which authorizes a state, at its option, to enact so-called right-to-work laws. Pursuant to this provision, Texas passed such laws. The question to be determined is not the validity of such legislative enactments, but whether they are applicable to the collective bargaining agreement in this case. Unfortunately, by focusing on uncertain legislative history rather than on the precise issue of whether federal or state law should apply to the employment contracts of maritime workers performing no work in any state,[2] the majority finesses the issue and ignores the impact of the central dispute in this case.

2. The evidence shows that the collective bargaining agreement was negotiated and executed in New York; that since 1942 labor contracts for the employee unit involved here have been negotiated in New York and that present negotiations for a successor contract have been occurring in New York. Mobil's corporate headquarters remain in New York, and prior to 1962 its Marine Transportation Department was likewise headquartered there. Information extracted from vessel logs shows that of the eight tankers operated by the company, five of them making typical trips touching the port of Beaumont for a period of time in May and June 1972 were in that port only 5.5% of the total time. A sixth vessel did not touch the Texas port during that period of time and part of July 1972. Many of the trips bypass Texas completely. For example, eight times a year a vessel travels from the East Coast to Puerto Rico and returns. At the time of the trial one of the vessels was en route to Guam on a 6-month charter, and had not been in a Texas port for 50 days. All of the vessels are located on the high seas or in non-Texas ports 80% to 90% of the time. 57% of the seamen are residents of states other than Texas.

It is undisputed that the combined effect of sections 7 and 8(a)(3) of the Labor Management Relations Act, as interpreted by the Supreme Court,[3] and section 14(b) of the Taft-Hartley Act is to recognize the validity of an agency shop except in those states which prohibit them. The majority points out that Congress in passing section 14(b) carved out no exception for seamen. What the majority fails to discern, however, is that seamen have traditionally maintained an exceptional status in regard to the regulation and control of their employment, and that section 14(b) cannot reasonably be construed to remove them from that category. Seamen, particularly the type of blue-water seamen involved here, as wards of admiralty have been accorded a special status and protection under federal maritime law unknown to state law in the domain of the master-servant relationship.[4]

3. NLRB v. General Motors Corp., 373 U.S. 734, 83 S.Ct. 1453, 10 L.Ed.2d 670 (1963); Retail Clerk's Inter. Ass'n v. Schermerhorn, 373 U.S. 746, 83 S.Ct. 1461, 10 L.Ed.2d 678 (1963).

4. *See, e.g.*, Garrett v. Moore-McCormack, 317 U.S. 239, 246-248, 63 S.Ct. 246, 251-252, 87 L.Ed. 239 (1942); Socony-Vacuum Co. v. Smith, 305 U.S. 424, 430-431, 59 S.Ct. 262, 266, 83 L.Ed. 265 (1939); The Arizona v. Anelich, 298 U.S. 110, 122-123, 56 S.Ct. 707, 711-712, 80 L.Ed. 1075 (1936); Warner v. Goltra, 293 U.S. 155, 162, 55 S.Ct. 46, 49, 79 L.Ed. 254 (1934). Contractual matters have been specially scrutinized in order to protect seamen. "Our national legis-

Unlike the land-based worker, the seaman's employment and all of the rights and restrictions flowing therefrom, are determined by federal statutory and admiralty law, not state law. Hiring, discharge and various terms of employment are regulated by shipping articles mandated by federal statute.[5] Compensation to seamen for illness, injury, disability and death is provided through the unique admiralty doctrine of maintenance and cure,[6] and by special federal statutory enactments such as the Jones

lature and the courts of admiralty have given particular expression to the wardship theory in matters relating to seamen's contracts." Norris, The Seaman as Ward of the Admiralty, 52 Mich. L. Rev. 479, 487 (1954).

5. 46 U.S.C. §§ 563-568.

6. The liberality of the remedy afforded by this ancient doctrine when compared to workmen's compensation acts is shown in the following passage from Norris, The Law of Seamen, Vol. 1, 2nd Ed., § 575:

> A seaman becomes entitled to maintenance and cure by showing that his injury or illness arose while he was in the service of the ship. The injury or illness need not arise out of his employment and the right to the remedy is irrespective of contributory negligence unless due to his own willful misbehaviour. A land worker who seeks an award under most compensation acts must show that the disability was caused by accidental injury or by an occupational disease. Under the general maritime law an illness which manifests itself during the period of employment (although perhaps an aggravation of a preexisting condition, the seriousness of which was not known to the seaman) entitles him to recover the cost of his maintenance and cure until the maximum cure is reached. The illness may be nothing more serious than a simple cold, but if it disables the seaman to an extent that he cannot resume his employment, he is entitled to be paid for his expenditures for medicines, nursing care and the cost of maintaining himself. Moreover, the per diem rate presently allowed to seamen for the cost of maintenance and cure is generally on a more liberal scale than that accorded by compensation. Finally, a seaman is entitled to the cost of his maintenance and cure immediately following the onset of his illness or injury, whereas compensation laws generally include a hiatus prior to the accrual of weekly payments.

Act[7] and the Death on the High Seas Act.[8] Federal maritime law covers the gamut of a seaman's employment relationship, including wages,[9] maritime liens for the collection therefor,[10] the protective procedures against attachment and assignment of wages,[11] the rights accorded seamen to receive at every port half of unpaid wages earned[12] and double payment for wages withheld without sufficient cause,[13] physical qualifications and requirements for seamen,[14] and disciplinary problems.[15] In no employment field is the master-servant relationship so predominantly controlled by federal maritime law than in that existing aboard ship between the master of the vessel and the men who man it. Indeed, it does not appear that there is any aspect of the employment relationship which Texas law may properly control—except, of course, for the novel injection of Texas' right-to-work law into the present labor contract. In practical effect, state regulation of this employer-employee relationship stops at the water's edge.

The majority opinion places much emphasis on the legislative history of the Taft-Hartley Act, concluding that it indicates great concern with the hiring process and a

7. 46 U.S.C.A. § 688.

8. 46 U.S.C. §§ 761-768.

9. 46 U.S.C. §§ 682-685.

10. 46 U.S.C. § 953.

11. 46 U.S.C. § 601.

12. 46 U.S.C. § 597.

13. 46 U.S.C. § 596.

14. 46 U.S.C. § 672.

15. 46 U.S.C. §§ 701-710.

willingness to substitute state law for federal standards where appropriate. Congress was in truth concerned about the adverse impact of compulsory unionism on the hiring process, but section 14(b) was not, as the majority suggests, designed to be the remedy for these ills. Section 14(b) was inserted into the Taft-Hartley Act merely to restate preexisting law, not to expand the jurisdiction of states relative to employment conditions involving maritime workers, traditionally the subject of federal law. The National Labor Relations Act (Wagner Act) itself was not intended to override state laws regulating the closed shop.[16] Congressional amendment of what is now section 8(a)(3) of the Labor Management Relationship Act, 29 U.S.C. § 158(a)(3), not the inclusion of section 14(b), was the chief tool designed to alleviate the perceived evils of compulsory unionism.

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16. In its report on the N.L.R.A., the Senate committee stated that "the bill does nothing to facilitate closed-shop agreements or to make them legal in any State where they may be illegal." S. Rep. No. 573, 74th Cong., 1st Sess. 11 (1935); *see also* H. Rep. No. 1147, 74th Con., 1st Sess. 19-20 (1935); S. Rep. No. 105, 80th Cong., 1st Sess. 6 (1947), 1 Leg. Hist. L.M.R.A. 412. In explaining to Congress the reason for section 14(b)'s inclusion, the conferees for the Taft-Hartley Act stated as follows:

> It was never the intention of the National Labor Relations Act, as is disclosed by the legislative history of that act, to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism. Neither of the so-called "closed shop" proviso in section 8(3) of the existing act nor the union shop and maintenance of membership proviso in section 8(a)(3) of the conference agreement could be said to authorize arrangements of this sort in States where such arrangements were contrary to the State policy. To make certain that there should be no question about this, section 13 was included in the House bill. The conference agreement, in section 14(b), contains a proviso having the same effect.

House Conf. Rep. No. 510, 80th Cong., 1st Sess. 60 (1947), 1 Leg. Hist. L.M.R.A. 564, U.S. Code Cong. Serv. p. 1166. *See also* H. Rep. No. 245, 80th Cong., 1st Sess. 44 (1947), 1 Leg. Hist. L.M.R.A. 335.

A careful reading of the legislative history of the Taft-Hartley Act shows that Congress felt that section 8(a)(3) would curb problems in the hiring process by removing prior union membership as an employment prerequisite and by providing that expulsion from a union would not necessitate discharge from employment so long as initiation fees or dues were not delinquent.[17] Senator Taft noted in debate that a prime example of problems generated by the closed shop was in the West Coast shipping industry.[18] He then outlined the changes that would be made by section 8(a)(3) and, with no reference whatever to section 14(b), concluded that the abuses in the hiring process would thereby be corrected.[19] Congress did indeed single out the maritime industry as a serious problem area, as noted by the majority opinion (*ante*, p .749 & n. 10). The cited provisions of the legislative history, however, make no reference to section 14(b) as a palliative for these problems; rather, the amendments to section 8(a)(3) were deemed fully capable of solving these problems.[20] Since the agency shop provision before us avoids the evils in the hiring process Congress was try-

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17. After reiterating some of the problems of the closed shop, the Senate Report on the Taft-Hartley Act detailed the remedial provisions contained in present section 8(a)(3) and concluded:

> It seems to us that *these amendments* remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability . . . the right to continue such agreements. (Emphasis added.)

S. Rep. No. 105, 80th Cong., 1st Sess. 7 (1947), 1 Leg. Hist. L.M.R.A. 413.

18. 93 Cong. Rec. 3952 (1947), 2 Leg. Hist. L.M.R.A. 1010.

19. Id. at 3952-3953, 2 Leg. Hist. L.M.R.A. 1010-1011.

20. S. Rep. No. 105, 80th Cong., 1st Sess. 6-7 (1947), 1 Leg. Hist. L.M.R.A. 412-413; see the quotation from this passage in n. 17, *supra*.

ing to correct, and since it is clearly valid under section 8(a)(3), it cannot be validly concluded that enforcement of this provision is contrary to federal labor policy.[21]

The majority opinion bases its holding on (1) the predominance of Texas contacts, (2) federal labor legislation, and (3) the significant interest which Texas has in applying its right-to-work laws. The consistent and traditional control by federal law of every phase of maritime employment relationships and contracts refutes the proposition that Employer's contacts with Texas[22] justifying injection state law into federal maritime affairs. As to federal labor policy, it is clear from the previous discussion that the agency shop provision in question in the present contract is totally consistent with Congress' desire for a fair hiring process. Moreover, whatever Texas' interest may be in applying its law to this contract, the State of Texas has not been sufficiently concerned either to invoke its laws itself or to intervene in these proceedings. Employer is seeking to avoid its own labor contract by vicarious assertion of Texas law. In any case, the admitted premise that the agency shop clause of the labor contract is in contravention of the law of Texas does not permit the conclusion that a clause contained in a

21. In any case the majority opinion does not fully explain how Congress could fairly be said to have intended that a New York employee of Mobil, who resides in a state where his employment contract was entered into and where agency shop provisions are permissible, and who performs no work whatever in Texas, should be prohibited by Texas law from enjoying the benefits of an agency shop provision in his employment contract.

22. The great bulk of the contracts with Texas recited by Employer and the majority are relationships between *Mobil* and Texas. Insofar as the workers are concerned, it is conceded that they perform no work in Texas, and that fewer than half are residents of Texas.

New York contract and affecting employment performed solely outside of the State of Texas is invalid.

The result which the majority reaches in this case is somewhat impractical. The attempt of the Court, at the behest of Mobil Oil Company, to give extraterritorial effect to Texas' right-to-work laws fails both in soundness and in logic. Here the majority has taken an employment relationship, traditionally one in admiralty, regulated in virtually all aspects by federal maritime law, involving seamen who are wards of admiralty, and has subjected this employment to state labor laws when none of the employees works in the state. How this can be done where all of the seamen's work is aboard vessels plying the high seas, and where most (57%) do not even reside in Texas, is not explained. Under the circumstances, the majority's conclusion is neither practical nor realistic.

In my view, the original majority panel decision in this case is correct and should be reaffirmed. Under the circumstances, I dissent.

JOHN R. BROWN, Chief Judge, in which DYER, Circuit Judge, joins, concurring in the dissent of Judge AINSWORTH.

Because I think this is an ideal case for the exercise of the primary jurisdiction by the NLRB, I would rather see this Court defer its decision and require the parties to present to the Board for its determination the issue—whether the Texas right to work provisions should apply under the 14(b) exception to § 8(a)(3) of the National Labor Relations Act—to this agency shop contract. Since the Court is not so disposed, I concur fully without reservation in the dissent.

The Court's opinion misplaces the emphasis of the Taft-Hartley Act[1] and this flaw in the ointment pervades the entire opinion. After tallying the almost due process-type contacts between the administration of the union agreement and the state of Texas, the Court rejects the job situs formula[2] in favor of this multiple contacts rule because it finds direction in the legislative history of the National Labor Relations Act. In addition, the Court finds persuasive evidence for its conclusion from the fact that the Texas right to work law was designed to proscribe precisely this kind of agency shop agreement and to apply to these kinds of workers.[3]

After first agreeing that the legislative history of the statute has no express answers for this problem (see Court opinion page 746), the Court concludes that the job situs doctrine is, in any case, an improper rule of thumb because the intent of Congress in adopting the Taft-Hartley Act was to eliminate the much-abused *hiring* monopoly of the closed shop system. But the fallacy here —as pointed out by the dissent—is that the adoption of § 14(b) was unrelated to this goal. Instead, it was § 8(a)(3) of the Labor Management Relations Act[4] that served this purpose.

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1. 29 U.S.C.A. § 151.

2. Northland Greyhound Lines, Inc., 80 NLRB No. 60 (1948); Western Electric Co., Inc., 84 NLRB No. 111 (1949).

3. This argument appears to beg the question. Undoubtedly Texas right to work laws do apply to employment relations within the state but whether these seamen fit that category is precisely the question here.

4. 29 U.S.C.A. § 158(a)(3) that reads:
(a) It shall be an unfair labor practice for an employer—
(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or

Section 8(a)(3) expressly sanctions as a matter of federal policy union shop agreements with the important limitation that such agreements will not be valid "as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."[5] While noting this "tension" between federal and state policy, the Court starts and finishes with the tacit assumption that the Court must find *some* applicable state law—almost in a conflicts-of-law analysis. The basis for that assumption is in no way

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discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

In addition to eliminating serious abuses of compulsory unionism, the legislative history indicates that Congress sought to "ensure the equal financial contribution of all employees who share in the benefits of union accomplishments through collective-bargaining." 11 Hous. L. Rev. 709, 711 (1974).

5. 29 U.S.C.A. § 164(b) (1973).

discernible from the Act itself or its legislative history. Instead, the emphasis of the Act is that union security agreements are of such importance that absent state proscription outlawing union shop employment relationships within that state, they will be favored. The job situs rule, though never before applied in precisely this situation,[6] is merely a logical distillation of § 14(b). For that reason I think we should follow it here as did the panel.[7]

Although I do concur fully in the dissenting opinion of Judge Ainsworth, under the circumstances I believe that it would be better administration and more consistent with sound legal principles for the Court to refer this case to the NLRB under the doctrine of primary jurisdiction. This is so because essentially the question here is whether state right to work amendments should be applied to this union contract under the National Labor Relations

6. In its attempt to distinguish the previous job situs cases, the Court makes what appears to be an erroneous distinction. While it is true that *Northland Greyhound Lines, Inc.* and *Western Electric Co.* (see note 2, *supra*) were concerned with the application of state right to work laws to workers employed in *more* than one state, in order to determine which state's law should apply to a multi-state contract, some state had to meet the criteria of 14(b). For that reason it is irrelevant whether the Board was selecting among several competing states or determining the appropriate application of one state's law. Therefore, we should consider the formula developed by the Board in those cases for they are highly relevant to the case at bar.

For example, in *Northland* the "headquarters of the employees * * * the focal points of the employment relationship" were defined as a place "where employees report to work, receive their instructions, and are paid their salaries." One benefit of this test, noted by the Board was that it would diminish the extraterritorial effect of the laws of any one state. 80 NLRB 288, 291 (1948). Also, in *Western Electric Co.* the NLRB applying this *Northland* test determined that the employees would be considered headquartered at their job site. 84 NLRB 1019, 1022 (1949).

7. Mobil Oil Corp. v. Oil, Chemical and Atomic Workers International Union, 5 Cir., 1973, 483 F.2d 603.

Act. The Supreme Court has approved[8] and this Court[9] has committed itself to this procedure repeatedly under various circumstances.

Two of the most significant instances were FPC cases where we ordered reference to the Commission for it to decide whether it had jurisdiction over the sale and purchase of royalties.[10] The Commission held that it did. It then went to the D. C. Circuit where it determined that the FPC was in error and did not have jurisdiction.[11] The significant thing here is that a Court may and often should refer basic statutory construction problems—including even the agency's jurisdiction—to the agency for its initial determination as to its own jurisdiction.

In addition the *Southwestern Sugar & Molasses Co.* case[12] is instructive on the scope and use of primary

8. Mitchell, Cole & Coke Co. v. Pennsylvania R. Co., 230 U.S. 247, 33 S.Ct. 916, 57 L.Ed. 1472; General American Tank Car Corp. v. El Dorado Terminal Co., 1939, 308 U.S. 422, 60 S.Ct. 325, 84 L.Ed. 361; United States v. Western Pacific R. R. Co., 1956, 352 U.S. 59, 77 S.Ct. 161, 1 L.Ed.2d 126; Far East Conference v. United States, 1951, 342 U.S. 570, 72 S.Ct. 492, 96 L.Ed. 576; Southwestern Sugar & Molasses Co. v. River Terminals Corp., 1959, 360 U.S. 411, 79 S.Ct. 1210, 3 L.Ed.2d 1334, 1959 AMC 1631.

9. Agricultural Transportation Association of Texas v. King, 5 Cir., 1965, 349 F.2d 873; Carter v. American Telephone & Telegraph Co., 5 Cir., 1966, 365 F.2d 486, 497; River Terminals Corp. v. Southwestern Sugar & Molasses Co., 5 Cir., 1958, 253 F.2d 922, 1958 AMC 1534 (after remand, 5 Cir., 1960, 274 F.2d 36, 1960 AMC 2064); Weymouth v. Colorado Interstate Gas Co., 5 Cir., 1966, 367 F.2d 84; J. M. Huber Corp. v. Denman, 5 Cir., 1966, 367 F.2d 104.

10. Weymouth v. Colorado Interstate Gas Co., 5 Cir., 1966, 367 F.2d 84, 102-103; J. M. Huber Corp. v. Denman, 5 Cir., 1966, 367 F.2d 104, 111-112.

11. Mobil Oil Corp. v. FPC, D.C. Cir., 1971, 149 U.S. App. D.C. 310, 367 F.2d 256, cert. denied, 406 U.S. 976, 92 S.Ct. 2409, 32 L.Ed.2d 676.

12. 253 F.2d 922, 1958 AMC 1534.

jurisdiction. There this Court referred an issue on the construction of the Interstate Commerce Act to the ICC. While the Supreme Court reversed this procedure because it thought that other issues should be reached first, they affirmed expressly in a very elaborate opinion that our primary jurisdiction reference was entirely proper and within the Court's power.[13] On remand the panel decided it on the merits and reached a result that made consideration by the administrative agency unnecessary.[14]

Primary jurisdiction is particularly invaluable for this case because, however, one may view the merits, it is acknowledged that the record below is inadequate to enable this Court to determine what, if any, partial remedies would be appropriate. (See Court's opinion page 758). Where 57% of the employees covered by this agreement are not Texas residents, further findings of fact and exploration of alternative remedies would certainly appear to be mandated. No matter how it is sliced the Court is trying to divine congressional policy for a situation never before faced in accommodating § 8(a)(3) and § 14(b). That policy should first be explored by the agency charged with responsibility for administering the Act which contains as an integral part the quasi-judicial machinery for hearing and deciding cases by formal opinions which, until overruled by a competent Court, become as authoritative as the words of the Act.

It is not abdication—indeed it is performance of judicial duty in the highest sense—for us to defer to the NLRB the initial determination of the interpretation of the Act under the circumstances of this industrial situation.

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13. Southwestern Sugar & Molasses Co. v. River Terminals Corp., 1959, 360 U.S. 411, 421, 79 S.Ct. 1210, 3 L.Ed.2d 1334, 1959 AMC 1631.

14. 5 Cir., 1960, 274 F.2d 36, 1960 AMC 2064.

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-3272

MOBIL OIL CORPORATION, ET AL.,
Plaintiffs-Appellees,

versus

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of Texas

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(August 10, 1973)

Before THORNBERRY, AINSWORTH and RONEY, Circuit Judges.

AINSWORTH, Circuit Judge: This suit was brought by Mobil Oil Corporation Marine Transportation Depart-

ment, Gulf-East Coast Operations [Employer] against the Oil, Chemical and Atomic Workers International Union AFL-CIO and Maritime Local No. 8-801 of that Union [Union] for a declaratory judgment under section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), (c) and 28 U.S.C. § 2201. It concerns the validity of an agency shop clause contained in a collective bargaining agreement between Employer and Union, which clause is in apparent conflict with Texas right-to-work laws.[1] The district court held that the Texas laws should take precedence, and rendered a declaratory judgment in favor of Employer, holding the agency shop clause void and unenforceable.

Union appeals, presenting a number of issues which we summarize as follows:

1) that this is an exceptional case where the N.L.R.B. should have primary jurisdiction and preempt judicial proceedings because the employees are seamen who work exclusively aboard deep sea tankers engaged in coastwise

1. Vernon's Ann. Civ. St. Art. 5154g, Section 1:
"It is hereby declared to be the public policy of the State of Texas that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization and that in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion."
Vernon's Ann. Civ. St. Art. 5207a, Section 2:
"No person shall be denied employment on account of membership or nonmembership in a labor union."
Vernon's Ann. Civ. St. Art. 5154a, Section 8a:
"It shall be unlawful for any labor union, any labor organizer, any officer, any agent or representative or any member of any labor union to collect, receive or demand, directly or indirectly, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege to work from any person not a member of the union; provided, however, this shall not prevent the collection of initiation fees as above stated."

commerce and some foreign commerce. Alternatively, that in the exercise of sound discretion the court should have declined to render a declaratory judgment;

2) that the district court erred in applying Texas right-to-work statutes to all its covered employees; and

3) that there is no case or controversy and the dispute was not ripe for declaratory judgment.

We hold that a controversy existed, that jurisdiction properly vested in the district court, and that there was no abuse by that court in declining to defer to N.L.R.B. jurisdiction. We further hold that the agency shop clause is valid and enforceable with respect to all employees covered by the collective bargaining agreement.

Sections 7 and 8(a)(3) [29 U.S.C. §§ 157, 158(a)(3)] of the Labor Management Relations Act specifically authorize a union shop, wherein employment is contingent on membership in a union.[2] These sections have been in-

2. 29 U.S.C. § 157:
"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."
29 U.S.C. § 158:
"(a) It shall be an unfair labor practice for an employer—
. . . .
(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor prac-

terpreted to authorize an agency shop, which is a union security agreement conditioning employment, in lieu of actual union membership, on the payment of regular union dues and initiation fees. *N.L.R.B. v. General Motors Corporation,* 373 U.S. 734, 738-739, 83 S.Ct. 1453, 1457 (1963); *Retail Clerks Inter. Ass'n. v. Schermerhorn,* 373 U.S. 746, 751-752, 83 S.Ct. 1461, 1464-1465 (1963).

The agency shop clause involved here states:

> "For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date."

Despite the provisos in sections 7 and 8(a)(3), recognizing the validity of union security agreements, section 14(b) of the Taft-Hartley Act [29 U.S.C. § 164(b)] provides that such agreements must give way to state law where the state prohibits the conditioning of employment upon union membership.[3] Such a prohibition is expressed in Texas' right-to-work laws and it is conceded that these Texas statutes bar an agency shop clause.[4]

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tice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later. . . ."

3. 29 U.S.C. § 164:

. . . .

"(b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law."

4. The Texas Attorney General has so ruled in his Opinion No. WW-1018.

Mobil Oil Corporation is a New York corporation. Employer is a division of Mobil's Marine Transportation Department and has its headquarters in Beaumont, Texas. Prior to 1962 the headquarters were in New York. It operates eight oceangoing tankers, which ply the waters of the East and Gulf Coasts of the United States, principally between the State of Texas and the State of New York. It employs unlicensed seamen from various states. Of a total of 289 employees, 123 have reported that Texas is their state of residence. Further, a total of 152 out of 289 have requested Employer to list Beaumont, Texas, as their shipping port.[5] All of the work performed by the seamen here is aboard ships and the men have no shore duties. They are usually paid in cash, generally at a northern port such as New York or Providence. At the Beaumont, Texas, headquarters payroll records are kept and various bookkeeping functions are performed including the withholding of federal income and FICA taxes and collection of union dues. Unemployment taxes are paid only to the State of Texas. Of the hiring of employees, 60 per cent occurs in Beaumont and 40 per cent at New York.

Union is the exclusive collective bargaining representative of the unlicensed seamen employed on Employer's tankers. The collective bargaining agreement, the subject of this controversy, was negotiated and executed in the State of New York. It was prepared in final form and retyped in Texas. Since 1942, a year after Union's certification to Mobile, labor contracts for the employee unit involved have been negotiated in New York. Present negotiations for a successor contract have been taking place in New York.

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5. There are 60 employees residing in New York, 21 in New Jersey, 16 in Florida, 13 in Louisiana, 10 in Maine, 10 in Rhode Island, and 36 other employees in 16 other states or territories.

The district judge found that a more substantial part of the administration of the collective bargaining agreement occurred in Texas than in any other state, and held that the enforcement or attempted enforcement by the Union of the agency shop clause directly involves the Company's Texas employees, as well as activities and administration of the agreement in Texas, in contravention of the Texas right-to-work laws. He therefore declared the clause to be void and unenforceable.

THE PREEMPTION ISSUE

Union concedes that generally N.L.R.B. preemption will not prevail in a section 301 suit, but contends that in exceptional cases such as this involving extraterritorial problems, the district court should have declined jurisdiction. We disagree.

While section 301 of the Labor Management Relations Act is applicable to suits for violation of contracts,[6] this section has been broadly construed to encompass suits invoking the judicial process for determination of the validity of a collective bargaining agreement, *El Paso*

6. 29 U.S.C. § 185:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

. . . .

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

Bldg. & Const. Tr. Coun. v. El Paso Chap. Assoc. Gen. Con., 5 Cir., 1967, 376 F.2d 797, as well as suits seeking a declaration of various rights and obligations of parties to such contracts, *Allied Oil Workers Union v. Ethyl Corporation*, 5 Cir., 1965, 341 F.2d 47. The Supreme Court has approved the deliberate choice of Congress to leave the enforcement of collective agreements "to the usual processes of the law." *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 513, 82 S.Ct. 519, 526 (1962). We observe no exceptional circumstances here which justify N.L.R.B. preemption of a proceeding clearly within the contemplation of section 301.

THE CASE OR CONTROVERSY ISSUE

Nor do we agree with appellants that the dispute has not ripened to a present case or controversy. On April 23, 1970, five months subsequent to the execution of the present collective bargaining agreement, Employer wrote to Union stating that the agency shop clause of the contract "is invalid under Texas law" and evidencing Employer's intention to require new employees to sign a certificate which would advise them that union membership would be on a purely voluntary basis. The policy was effectuated and new employees were so advised. Union made no response to Employer's letter. In July 1971, however, Union in a newsletter to its members wrote that

> "As far as this Union is concerned any employee in our division of Mobil will either join our Union or pay dues to the Union. We intend to exercise our right to have the employment of any unlicensed seaman terminated who does not join or pay dues to the Union. We hope this answers all questions regarding this point."

Employer obtained a copy of the newsletter and shortly thereafter filed this complaint to declare the agency clause invalid.

Whether a case or controversy is presented must be determined on a case-by-case basis.

> "Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."

Maryland Casualty Co. v. Pacific Coal & Iron Co., 312 U.S. 270, 273, 61 S.Ct. 510, 512 (1941).

Applying these principles to this case, we have no difficulty concluding that a substantial controversy involving diametrically opposed interests between Union and Employer existed. Union intended to enforce its agency shop policy; Employer, on the other hand, intended to abolish it, and each party was aware of the intentions of the other. The complaint was, therefore, not premature.

THE VALIDITY OF THE AGENCY SHOP CLAUSE

This is a case of first impression. We have found no direct authority bearing on the issue involved. Employer contends in essence that the law of Texas is predominant because it is the locale of Employer's headquarters, the state in which (compared to the other states) the greater number of significant transactions and contacts occur, and the state in which a more substantial part of the administration and performance of the collective bargaining agreement occurs. Union contends that the situs of the

employees' work, the high seas, is determinative, and that Texas state law is therefore inapplicable. Reliance is placed on *Western Electric Co., Inc.*, 84 N.L.R.B. No. 111 (1949) and *Northland Greyhound Lines, Incorporated*, 80 N.L.R.B. No. 60 (1949), in support of Union's contention.

In *Western Electric*, the Union (Communication Workers of America, CIO, Installation Division #6) petitioned for a union-shop election. The Board was called upon to determine an appropriate unit of mobile telephone installation employees who performed their work in the District of Columbia and 45 states, some of which prohibited union security. The Board determined the appropriate unit to include only members of the contract unit subject to state laws which did not prohibit the union shop. In deciding the applicable state law by which the members would be governed, the Board used as a criterion the headquarters of the individual workers, and relied on its prior decision in *Northland Greyhound Lines, Inc.*, 80 N.L.R.B. No. 60 (1949). In *Northland Greyhound*, the Board held that "headquarters" are "where the employees report to work, receive their instructions, and are paid their salaries." The Board in *Western* held that the headquarters of the installation employees appeared "to be at their job site, as that is where they report for work, receive their instructions, and are paid their wages." Accordingly, the Board considered each employee "to be subject to the law of the State in which his job site is located," and excluded "all employees whose job sites are located in States which prohibit union-shop agreements" from the unit.

Union contends that *Western Electric* recognizes employee job situs as the test for deciding the law applicable

to an agency shop clause in a collective bargaining agreement. Employer contends that *Western Electric* and *Northland Greyhound* do not bind this Court and distinguishes them on their facts, pointing out that neither the hiring or firing nor the managerial activity or other incidents of employment occurred in one state alone, as in the present case. Employer further contends that if any rule can be gleaned from these cases it is a rule establishing "headquarters" of employees as the proper criterion as opposed to "job situs" but that in either event the State of Texas meets both criteria.[7] In *Western Electric* and *Northland Greyhound* the Board apparently believed that "headquarters" and "job situs" were more or less equivalent under the facts of those cases. The matter before us presents a more complex question. Unlike the cited Board cases, in which headquarters coincided with jobsites in various states, in this case we have only one headquarters, in Texas, with job situs not in individual states but on the high seas.

In the cited N.L.R.B. cases, the Board solved the problem by recommending separate units which would be sub-

7. Employer contends that if Board action is to be accorded any weight, a recent decision by a Board Trial Examiner supports its contention that a state's right-to-work laws should apply to seafaring employees shipping through a port in that state, citing Seafarers Int. Union of No. America, Case No. 23-CB-1222 (N.L.R.B. March 30, 1972), an unfair labor practice case. Subsequent to the decision of the Trial Examiner (now Administrative Law Judge), the National Labor Relations Board, in reviewing that decision, expressly refused to pass on the Administrative Law Judge's findings and conclusions with respect to the application of the Texas right-to-work law. The Board said: "The Administrative Law Judge based his finding that Respondent violated Section 8(b)(1)(A) and (2) of the Act on the effect of Texas' right-to-work law on Charging Party James Moyles' obligation to pay dues. While we agree that Respondent violated . . . the Act, we do so only for the reasons enumerated herein." Seafarers International Union of North America, Atlantic, Gulf, Lakes & Inland Waters District, et al., 202 N.L.R.B. No. 91.

ject to the laws of the respective states in which the employees were headquartered, that is, the state in which most of their employment contacts occurred, the state in which they were working. In the present case, the operation being sea-based, with work performance occurring on the high seas, we are unable to reach a solution as simple as that employed by the Board.

Conceding, arguendo, that the district court correctly found that a more substantial part of the administration and performance of the collective bargaining agreement occurs in the State of Texas than in any other state, such a finding is not decisive of the issues in this case. In making such a finding the district judge took into consideration various facts associated with Texas, and acts occurring therein, thereby weighing the interests of Texas against other states. In so doing the court failed to give proper consideration to the most important factor in the case, that is, the situs of the work performance of the covered employees. The trial judge, in written factual findings, held in this regard that

> "Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters."[8]

8. Union points out in its brief, extracting information from vessel logs, that the vessels making typical trips touching the port of Beaumont, for example, the MOBIL ARROW, the MOBIL ECLIPSE, the MOBIL FUEL, and the MOBIL GAS, for a period of time in May and June 1972 were in the port of Beaumont only 5.5 per cent of the total time involved. Adding to this example the time of the MOBIL LUBE in May, June and part of July 1972, during which time the vessel did not touch Beaumont at all, our own rough calculation

Use of Employers' headquarters as the decisive criterion in this case would allow an employer to make an arbitrary choice, and could produce bizarre consequences. Headquarters could be shifted about by large national companies to states with favorable labor laws, such as the right-to-work statutes. The purpose of sections 7 and 8 of the Labor Management Relations Act or of section 14(b) of the Taft-Hartley Act, the applicable statutes here, could easily be defeated. Under the facts of this case the job situs of the employees is the most important and logical factor. As the Union has pointed out to us, Mobil's top headquarters is in New York, and prior to 1962 its Marine Transportation Department was likewise headquartered in New York. Thus, as the Union states, the change in headquarters from New York to Beaumont did not substantially change the working location of the men which remained the same.

Through the collective bargaining agreement, the parties thereto agreed to an agency shop clause. This type of membership is authorized by sections 7 and 8 of the Labor Management Relations Act unless forbidden by state law applicable to these circumstances. The location of Employer's headquarters and predominance of Texas contacts over any other state do not mandate a conclusion that the employees are Texas employees. State right-to-work laws are applicable only to employees of that particular state. The employees involved here are not for

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shows that time in the port of Beaumont was a mere 4 percent of the total time involved.

Many of the trips do not even touch a Texas port. For example, eight times a year a vessel makes a trip from the East Coast to Puerto Rico and return. The MOBIL LUBE, referred to above, was at the time of trial en route to Guam on a 6-month charter, and had not been in a Texas port for 50 days, yet the members of that crew were also covered by the labor agreement.

the purpose of their collective bargaining agreement employees of Texas or any other state—they are mobile, maritime employees, whose principal place of employment, or jobsite, is on the high seas.

The district court was called upon to determine the validity of a portion of the collective bargaining agreement, the agency shop clause. Our sole duty is to decide whether that determination was erroneous. We cannot rewrite the contract; that is the prerogative of the parties to the agreement through the negotiating machinery by which they are bound. Nor can we compel concessions or otherwise impose our views of a desirable settlement. *N.L.R.B. v. Insurance Agents' International Union,* 361 U.S. 477, 487, 80 S.Ct. 419, 426 (1970); *National Labor Relations Board v. American Nat. Ins. Co.,* 343 U.S. 395, 404, 72 S.Ct. 824, 829 (1952); *M.R.&R. Trucking Company v. N.L.R.B.,* 5 Cir., 1970, 434 F.2d 689, 695. *See also H. K. Porter Co., Inc. v. N.L.R.B.,* 397 U.S. 99, 90 S.Ct. 821 (1970)

When the parties to the collective bargaining agreement freely chose to be covered by an agency shop clause we must infer that they intended to be bound by their contract. They "cannot be presumed to have contemplated a law which would defeat their engagement." *Pritchard v. Norton,* 106 U.S. 124, 137, 1 S.Ct. 102, 112 (1882).[9] If there is to be a change, it must be the result of further negotiations.

REVERSED.

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9. *See also* Dailey v. Transitron Electronic Corp., 5 Cir., 1973, 475 F.2d 12 [No. 72-3323, March 15, 1973]; Teas v. Kimball, 5 Cir., 1958, 257 F.2d 817, 823.

THORNBERRY, Circuit Judge, dissenting:

I concur in the majority's decision on all issues except the last one, the validity of the agency shop clause; I would hold that the district court properly applied Texas law and declared the clause invalid.

In terms of the language of § 14(b) of the Taft-Hartley Act[1] the issue is whether the collective bargaining agreement between the employer and the union applies to "employment in any state" whose right-to-work laws would invalidate the agency shop clause, i.e. whether the agreement applies to "employment in" Texas. As the majority opinion points out, the problem of deciding where the "employment" is located when the situs of the work performed is not the same as the location of the employer's headquarters or the place where the employees are hired and fired is one which we encounter here for the first time. The majority apparently accepts the district court's approach to the problem, which entails examining and weighing the various contacts of the employer and its employees with the state whose laws are said to apply, but it disagrees with the district court's conclusion that the employment contacts with Texas were sufficient to warrant considering the employment to be "in" that state. Reversal is predicated primarily on the conclusion that "[u]nder the facts of this case the job situs of the employees is the most important and logical factor."

I, too, accept the district court's significant-contacts approach, but would hold the district court properly concluded under it that the collective agreement in this case applied to "employment in" Texas. Beyond noting the location of the employer's headquarters in Texas, the

1. § 14(b) is quoted in note 3 to the majority opinion.

district court found that the employer "employs, or approves the employment of, all unlicensed seamen at its headquarters in Beaumont, Texas." Pay records are maintained in Texas and funds are placed on board the ships at Texas ports for disbursements to the employees. All final hiring decisions are made in Texas, and unemployment taxes are paid to the State of Texas. Finally, a majority of the employees list Beaumont as their shipping port, and almost half reside in Texas. These contacts with Texas seem to me more than sufficient to give that State a strong interest in applying its laws to the collective agreement between the employer and the union and to warrant considering the employment to be "in" Texas within the meaning of § 14(b).

The majority argues that if location of the employer's headquarters were regarded as the decisive criterion, employers might choose headquarters locations in states with right-to-work laws and thereby defeat national labor policy. In response, it should be pointed out initially that the district court did not designate the location of the employer's headquarters as the decisive factor, but considered the full range of employer and employee contacts with Texas. More basically, an employer's choice of a location for its headquarters to obtain the benefit of local right-to-work laws would not contravene national labor policy. Section 14(b) of the Taft-Hartley Act expressly permits states to enact and apply right-to-work laws, and it certainly implies no limitation on employer's freedom to choose to locate in any of the various states. The effect of the majority's opinion is to carve out collective bargaining contracts between maritime employers and employees as a special class, not subject to state laws in the same way that, for example, collective contracts between

an interstate trucking or busing business with its employees would be. The majority's emphasis on the geographical situs of work performed outside the state's boundaries seems to me to unduly discount other substantial aspects of the employment relationship, and I do not discern a basis in the statute or in national labor policy for the maritime exemption which the majority establishes.

APPENDIX C

Section 14(b), 29 U.S.C.A. 164(b).

Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Section 8(a)(3), 29 U.S.C.A. 158(a)(3).

* * *

(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United State, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make

such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Art. 5154g, Vernon's Annotated Civil Statutes.

Section 1. It is hereby declared to be the public policy of the State of Texas that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization and in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion.

Art. 5207a, Vernon's Annotated Civil Statutes.

Section 2. No person shall be denied employment on account of membership or nonmembership in a labor union.

Art. 5154a, Vernon's Annotated Civil Statutes.

Section 8a. It shall be unlawful for any labor union, any labor organizer, any officer, any agent or representative or any member of any labor union to collect, receive or demand, directly or indirectly, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege to work from any person not a member of the union; provided, however, this shall not prevent the collection of initiation fees as above stated.

APPENDIX D

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CIVIL NO. 7413

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS, Plaintiff

v.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO and MARITIME LOCAL NO. 8-801 OF OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO, Defendants

FINDINGS OF FACT

1.

Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, the Plaintiff herein, operates eight (8) oceangoing tankers documented under the laws of the United States.

2.

Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union AFL-CIO, which is affiliated with Defendant Oil, Chemical and Atomic Workers International Union, AFL-CIO, is the exclusive collective bargaining representative of all unlicensed seamen employed on board Plaintiff's tankers.

3.

Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, which is the Plaintiff herein, has its management headquarters in Jefferson County, Texas and has been so located since April 1,

1962. Mobil Oil Corporation is a New York corporation and has qualified to do business in the State of Texas.

4.

Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO maintains offices in Beaumont, Texas and in New York, New York.

5.

Plaintiff and Defendants negotiated a collective bargaining agreement in the State of New York to be effective from November 1, 1969 to July 31, 1972.

6.

A draft of the collective bargaining agreement dated November 1, 1969 was executed in the State of New York.

7.

The collective bargaining agreement was typewritten and prepared in final form and re-executed in the State of Texas.

8.

The State of Texas collects unemployment compensation insurance payments on all personnel employed on board Plaintiff's tankers, regardless of the designation of home address or shipping port.

9.

Payments of unemployment compensation insurance have been made to the State of Texas since April 1, 1962 on account of all personnel employed on board Plaintiff's tankers.

10.

Two Hundred eighty-nine (289) unlicensed seamen are employed by Plaintiff.

11.

One hundred twenty-three (123) unlicensed seamen

out of two hundred eighty-nine (289) have reported to Plaintiff that Texas is their State of residence.

12.

One hundred fifty-two (152) unlicensed seamen out of two hundred eighty-nine (289) have requested Plaintiff to list Beaumont, Texas as their shipping port.

13.

Payroll records are maintained in Texas for all personnel employed on board Plaintiff's tankers, and Plaintiff places funds on board its tankers in Texas for use in paying wages due to personnel employed on board Plaintiff's tankers.

14.

Plaintiff makes remittances in Texas of F.I.C.A. taxes as well as federal income taxes withheld from the pay of all personnel employed on board Plaintiff's tankers.

15.

Plaintiff employs, or approves the employment of, all unlicensed seamen at its headquarters in Beaumont, Texas.

16.

Plaintiff makes monthly remittances of union dues deducted pursuant to authorization from the wages of unlicensed seamen, with such remittance being mailed by Plaintiff from Texas to the New York office of Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO.

17.

All grievances filed on approved grievance forms by unlicensed seamen employed on board Plaintiff's tankers are submitted to and considered by Plaintiff's manager at his office in Beaumont, Texas.

18.

All of the unlicensed seamen employed on board Plain-

tiff's tankers are regularly present in the State of Texas inasmuch as Plaintiff's tankers are on voyages beginning or ending at Texas ports in their normal trade.

19.

At all times some of the unlicensed seamen employed by Plaintiff are in the State of Texas, either on board tankers operated by Plaintiff or on paid vacation receiving pay from Plaintiff.

20.

A more substantial part of the administration of the collective bargaining agreement and the performance thereof occurs and takes place in the State of Texas than in any other State.

21.

The acts performed in the State of Texas in the administration and performance of the collective bargaining agreement are such that the State of Texas is intimately concerned with the collective bargaining agreement and with the employees working thereunder.

22.

Plaintiff advised Defendants that the agency shop clause of the collective bargaining agreement is unlawful and invalid because of violation of the Texas right-to-work statutes, and Plaintiff advised the personnel employed on board Plaintiff's tankers that membership in labor unions is voluntary.

23.

Defendants rejected Plaintiff's position and issued written notice in July, 1971 to unlicensed seamen employed on board Plaintiff's tankers stating that membership in Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, or payment of dues to Defendant Maritime Local No. 8-801

of Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a condition of their employment and that Defendants will cause any non-complying employees to be fired.

24.

A bona fide controversy exists between the parties with respect to the validity of the agency shop clause (Article I, ¶2b) in the collective bargaining agreement between Plaintiff and Defendants.

25.

The enforcement or attempted enforcement by Defendants of the agency shop clause (Article I, ¶2b) in the collective bargaining agreement directly involves Plaintiff's employees in the State of Texas.

CONCLUSIONS OF LAW

1.

An actual bona fide controversy exists between the parties so as to give the Court jurisdiction of this cause under §301 of the Labor-Management Relations Act of 1947, as amended (29 U.S.C., §185(a) and (c), for the purpose of securing declaratory judgment pursuant to the Federal Declaratory Judgment Act (28 U.S.C., §2201).

2.

The controversy is not moot.

3.

The statutory procedure before the National Labor Relations Board does not preclude the Court's consideration of the issues in this case or prevent the Court from entering a declaratory judgment herein.

4.

The Texas right-to-work statutes have not been pre-

empted by the Labor-Management Relations Act of 1947, as amended, and the validity of the Texas right-to-work statutes with respect to the execution or application of a collective bargaining agreement with an agency shop clause is upheld by Sec. 14(b) of the Labor-Management Relations Act of 1947, as amended (29 U.S.C. §164(b).

5.

The application and attempted application of the agency shop clause (Article I, ¶2b) of the collective bargaining agreement to all of Plaintiff's operations and employees contravenes the Texas right-to-work statutes, being §8a of Article 5154a; §2 of Article 5207a; §1 of Article 5154g, Vernon's Annotated Civil Statutes.

6.

The agency shop clause (Article I, ¶2b) of said collective bargaining agreement is void and unenforceable. *Accord*, Opinion No. WW-1018 of the Texas Attorney General issued on March 14, 1961.

7.

The agency shop clause (Article I, ¶2b) of said collective bargaining agreement is severable and its invalidity does not affect the remaining provisions of the contract.

8.

Plaintiff is entitled to the relief sought, and judgment should be entered accordingly.

SIGNED and ENTERED this 12th day of July, 1972.

/s/ Joe J. Fisher
Chief Judge, United States
District Court

AMENDED FINDINGS OF FACT

Defendants' Motion for Amended Findings is hereby granted in part, and this Court's "Memorandum with Findings of Fact and Conclusions of Law" as signed and entered on July 12, 1972 is amended and supplemented as follows:

(a) Between Finding of Fact No. 18 and 19 there shall be added a new Finding of Fact, numbered 18(a) which shall state as follows:

> "Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters."

AMENDED CONCLUSION OF LAW

(b) The Conclusion of Law No. 5 shall be amended so as to add the words "any or" immediately prior to the words "all of Plaintiff's operations and employees". As amended said Conclusion of Law No. 5 will read:

> "The application and attempted application of the agency shop clause (Article I, ¶2b) of the collective bargaining agreement to any or all of Plaintiff's operations and employees contravenes the Texas right-to-work statutes, being §8a of Article 5154a; §2 of Article 5207a; §1 of Article 5154g, Vernon's Annotated Civil Statutes."

RENDERED and SIGNED this 14th day of August, 1972.

/s/ Joe J. Fisher
Judge Presiding

JUDGMENT

(Number and title omitted) (Filed: July 12, 1972)

This action came on to be tried before the Court and the evidence adduced by the parties having been heard and the Court having made its findings of fact and conclusions of law:

It is hereby, ORDERED, DECLARED and ADJUDGED that:

1.

Article I, ¶2b of the collective bargaining agreement dated November 1, 1969 between Plaintiff and Defendants, reading as follows:

"2. UNION SECURITY

b. For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date.",

is void and unenforceable.

2.

Article I, ¶2b is severable from the remainder of the collective bargaining agreement and the invalidity of said Article I, ¶2b does not affect the other provisions in said contract, all of which remain in full force and effect.

3.

Costs are adjudged against the Defendants.

To which action, order and ruling of the Court Defendants then and there in open court excepted and are allowed their exceptions.

SIGNED and ENTERED this 12th day of July, 1972.

/s/ Joe J. Fisher
Chief Judge, United States
District Court

Supreme Court, U. S.
FILED
DEC 6 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO
AND MARITIME LOCAL
UNION No. 8-801

Petitioners,

v.

MOBIL OIL CORPORATION

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 4, 1975; CERTIORARI GRANTED OCTOBER 6, 1975.

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO
AND MARITIME LOCAL
UNION No. 8-801

Petitioners,

v.

MOBIL OIL CORPORATION

Respondent.

ON WRIT OF CERTIORARI TO THE
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FOR THE FIFTH CIRCUIT

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APRIL 4, 1975; CERTIORARI GRANTED
OCTOBER 6, 1975.

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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

9/16/71 Filed Plaintiff's Original COMPLAINT; issued summonses and delivered to U.S. Marshal with $25 check for Marshal's fees.

9/17/71 Filed Marshal's Return on Summons: Served J. Elro Brown, 1500 Jefferson Drive, Port Arthur, Texas, Office; 3101 11th Street, Port Arthur, Texas, Home, September 16, 1971.

9/20/71 Filed Marshal's Return on Summons: Served Ivan B. Haven, 1500 Jefferson Drive, Port Arthur, Texas, Office; 1021 Washington, Port Neches, Texas, Home, September 17, 1971.

9/20/71 Filed Marshal's Return on Summons: Served John D. Perrio, 6101 Edgemoor Drive, Houston, Texas 77036, September 17, 1971.

10/ 6/71 Filed Defendants' Motion to Enlarge the Time to Answer or Plead.

10/ 8/71 Filed Plaintiff's Objection to Defendants' Motion to Enlarge Time to Answer or Plead.

10/ 9/71 Filed Defendants' Motion to Dismiss.

10/ 8/71 ORDER ENLARGING TIME TO ANSWER OR PLEAD signed by Judge Fisher and filed, grants extension to October 27, 1971, to answer

or otherwise plead to the complaint in the above case. Attorneys notified by copies of Order.

10/13/71 Filed Plaintiff's Objections to Defendants' Motion to Dismiss, and Memorandum of Authorities.

10/25/71 ORDER DENYING DEFENDANTS' MOTION TO DISMISS, signed by Judge Fisher and filed. Attorneys notified.

11/ 3/71 Filed DEFENDANT'S ANSWER.

2/ 4/72 Filed Plaintiff's Motion for Summary Judgment.

2/11/72 Filed REQUEST for Extension of Date for Submission of Plaintiff's Motion for Summary Judgment.

2/16/71 ORDER, signed by Judge Fisher and filed, ordered the submission date for Plaintiff's Motion for Summary Judgment and Defendants' controverting materials is hereby reset to March 10, 1972. Attorneys notified.

3/10/72 Filed Defendants' Opposition to Plaintiff's Motion for Summary Judgment.

3/30/72 Filed Plaintiff's MOTION for Leave to File Supplemental Affidavit and Memorandum in Support of Motion for Summary Judgment.

3/30/72 Filed ORDER signed by Judge Fisher GRANTING Plaintiff's MOTION to File Supplemental Affidavit and Memorandum in Support of Motion for Summary Judgment.

3/30/72 Notified Counsel.

4/ 7/72 ORDER, signed by Judge Fisher and filed, denied motion of Plaintiff for summary judgment. Attorneys notified.

6/26/72 Filed PRE-TRIAL STIPULATION and ORDER signed by Judge Fisher. Counsel Present.

6/26/72 Trial Begins, 10:20 A.M.

6/27/72 Trial in 2nd Day. Trial Ends 2:00 P.M. Counsel given until July 10, 1972, to prepare Proposed Findings of Fact and Conclusions of Law to be submitted direcly to Court.

7/10/72 Filed Defendants' Proposed Findings of Fact and Conclusions of Law.

7/10/72 Filed Defendants' MEMORANDUM Re Proposed Findings and Conclusions.

7/10/72 Filed Plaintiff's BRIEF in Support of Motion for Judgment.

7/10/72 Filed Plaintiff's SUPPLEMENTAL MEMORANDUM.

7/12/72 MEMORANDUM WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW, signed by Judge Fisher and filed.

7/12/72 JUDGMENT signed by Judge Fisher and filed, that Article 1, 2b of collective bargaining agreement, dated 11-1-69, with reference that as condition of employment all employees become

members of Union, VOID & UNENFORCEABLE: that Article 1, 2b, is severable from remainder of bargaining agreement, and does not affect other provisions in contract; and that costs are taxed against defendant.

7/12/72 Certified copies mailed all counsel of record and to Judge Fisher.

7/24/72 Filed Defendants' Motion for New Trial and Amendment of Judgment and MOTION for Amended and Additional Findings.

7/31/72 Filed Plaintiff's OBJECTIONS to Defendants' Motion for New Trial and Amendment of Judgment and Findings.

8/14/72 Filed ORDER signed by Judge Fisher DENYING Defendants' MOTION for New Trial, GRANTING an Additional Finding of Fact and AMENDING a Conclusion of Law.

8/15/72 Filed Court Reporter's Transcript of Proceedings.

9/13/72 Filed NOTICE OF APPEAL to U.S. Court of Appeals, Fifth Circuit, by Defendant, OCAW International Union, et al from Judgment entered on July 12, 1972 and Order overruling Motion for New Trial by Defendant on August 14, 1972.

9/13/72 Certified copy of Notice of Appeal mailed to Appellant, Mr. Chris Dixie, Houston, Texas; Fifth Circuit Court of Appeals, New Orleans,

Louisiana; Mr. James W. Hambright, Appellee, Beaumont, Texas; and U.S. Court Reporter, Beaumont, Texas, with transmittal letter.

9/13/72 Filed APPEAL BOND by Defendant, Mr. Chris Dixie, Houston, Texas in the sum of $250.00 (Lawyers Surety Corporation).

8/10/73 Opinion of Court of Appeals entered.

11/8/74 Opinion of Court of Appeals *en banc* entered.

4/4/75 Petition for Certiorari Filed.

10/6/75 Order Granting Certiorari Issued.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

C. A. No. 7413

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS

vs.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO AND MARITIME LOCAL NO. 8-801 OF OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO

PLAINTIFF'S ORIGINAL COMPLAINT

(Filed: September 16, 1971)

COME NOW Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, hereinafter called Plaintiff, complaining of Oil, Chemical and Atomic Workers International Union AFL-CIO and also Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union AFL-CIO, herinafter called Defendants, and would show as follows:

1.

Plaintiff, an operating division of said Department of said Corporation, has its management headquarters and principal place of business located in an office building on the premises of the Mobil Refinery in Jefferson County, Texas, and its mailing address is P.O. Box 3444, Beaumont, Texas 77704. Mobil Oil Corporation is incorporated under the laws of the State of New York and has a valid and subsisting permit to do business in Texas.

Defendant Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization with its principal headquarters in Denver, Colorado, but does business and represents its members in Jefferson County, Texas, and may be served by service of process upon its International Representatives who reside in said County, one being J. Elro Brown whose office address in 1500 Jefferson Drive, Port Arthur, Texas, and home address is 3101 11th Street, Port Arthur, Texas, and another being Ivan B. Haven whose office address is 1500 Jefferson Drive, Port Arthur, Texas, and home address is 1021 Washington, Port Neches, Texas.

Defendant, Maritime Local No. 8-801 of said Oil, Chemical and Atomic Workers International Union, AFL-CIO (formerly known as Socony Vacuum Tanker Men's Association) is a labor organization doing business and representing its members in Jefferson County, Texas, and maintains an office located in Room 201 Goodhue Building, Beaumont, Jefferson County, Texas, where it may be served by delivering process to its officer or agent at such address and may also be served by service upon its president, John D. Perrio, a resident of Houston, Harris County, Texas, whose address is 6101 Edgemoor Drive, Houston, Texas 77036, and by service upon its officer, Clinton W. Weeks, a resident of San Augustine County, Texas, whose residence and address is Route 1, Box 208-B, San Augustine, Texas 75972.

2.

The Court has jurisdiction of this cause in that the case is brought under Sec. 301 of the Labor Management Relations Act of 1947 as amended, 29 U.S.C. § 185(a) and (c) for the purpose of securing a declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

3.

Plaintiff and Defendants are parties to a labor contract dated November 1, 1969, and not expiring until July 31, 1972. Such contract covers many of Plaintiff's employees who are represented by Defendants as their collective bar-

gaining representatives for purposes of wages, hours and working conditions.

4.

In its Union security provisions said labor contract contains what is commonly referred to as an agency shop clause which requires and compels membership or payment of regular Union dues and initiation fees by all employees in the bargaining unit represented by said Defendants.

5.

Said agency shop clause is unlawful under the Right-to-Work laws of the State of Texas. Plaintiff seeks a declaratory judgment that such contract provisions are therefore invalid and unenforceable.

6.

Said labor contract provides that in the event any provision thereof shall be declared invalid by any court of competent jurisdiction all other provisions of the contract shall remain in full force and effect. Plaintiff seeks declaratory judgment that except for said provisions unlawful under Texas law the remainder of the labor contract is in full force and effect.

7.

An actual controversy exists between Plaintiff and Defendants in that Plaintiff has advised Defendants that the subject clause is unlawful and Plaintiff has advised its employees that Union membership is voluntary, but the Defendants have rejected such position and have recently issued a written notice to Plaintiff's employees dated July 1971 threatening that Union membership or payment of Union dues is a condition of their employment because of such contract clause and that Defendants will cause any non-complying employee to be fired.

WHEREFORE, premises considered, Plaintiff prays that

Defendants be cited to appear and answer herein, that said agency shop portion of the labor contract be declared unlawful, invalid, and unenforceable, that the remainder of the contract be declared in full force and effect, that it have judgment for its costs, and for such other relief as it may be entitled to receive.

Respectfully submitted,

WARREN H. GREENE, JR.
150 E. 42nd Street
New York, New York 10017

OBGAIN, BELL & TUCKER
By /s/ JAMES W. HAMBRIGHT
Beaumont Savings Bldg.
Beaumont, Texas 77701

Attorneys for Plaintiff

DEFENDANTS' MOTION TO DISMISS

(Number and title omitted) (Filed: October 8, 1971)

Defendants, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, being all Defendants in the above cause, move to dismiss the complaint in the above case for the following reasons:

I.

This Court lacks subject matter jurisdiction of this case because this is not an action to enforce a contract under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C.A. Section 185.

II.

The matters to which the complaint is addressed are within the exclusive jurisdiction of the National Labor Relations Board.

III.

The complaint fails to state a claim upon which relief can be granted.

DIXIE, WOLF & HALL

By /s/ CHRIS DIXIE
Chris Dixie
Suite 401, 609 Fannin
St. Bldg.
Houston, Texas 77002
713/223-4444

Attorneys for Defendants

PLAINTIFF'S OBJECTIONS TO DEFENDANTS' MOTION TO DISMISS, AND MEMORANDUM OF AUTHORITIES

NOW COMES Plaintiff Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations and objecting to motion to dismiss filed herein by Defendants Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, would respectfully show as follows:

1.

Defendants say that this is not a Section 301 action to enforce a contract and that the Court lacks jurisdiction. Such contention is without merit. It is well settled that declaratory judgment actions on labor contracts are cognizable by the courts under Section 301 of the LMRA, 29 U.S.C. § 185(a) and (c). Plaintiff's business is in interstate commerce, both Defendants are labor organizations, there is a labor contract between the parties, and Plaintiff seeks that part of it be cancelled and the rest of it enforced. There is no question of the Court's jurisdiction. Unions have frequently brought Section 301 suits to declare their rights under labor contracts, and so have employees, sometimes seeking reformation and other ancillary orders. A typical federal court Section 301 suit brought by a union seeking declaratory judgment as to validity of a portion of a labor contract is *Amalgamated Assoc. of Street Electric Railway & Motor Coach Employees, Div. 1225* v. *Las Vegas—Tonopah—Reno Stage Line, Inc.* 202 F. Supp. 726 (U.S.D.C., Nev. 1962) affirmed at 319 F.2d 783 (9th Cir. 1963). A federal court Section 301 suit brought by an employer seeking declaratory judgment and in the alternative reformation of the labor contract is *West Coast Telephone Co.* v. *Local Union No. 77, International Brotherhood of Electrical Workers, AFL-CIO* 431 F.2d 1219 (1970).

2.

Defendants next contend that the case is within the exclusive jurisdiction of the National Labor Relations Board. Such contention is without merit. Many cases have held that the courts have jurisdiction of Section 301 suits even though the case disclosed certain facts which were not only arguably, but concededly, an unfair labor practice. *Smith* v. *Evening News Association*, 371 U.S. 195, 83 S.Ct. 267, 9 L.E.2d 246, 51 LRRM 2646 (1962). *Vaca* v. *Sipes*, 386 U.S. 171, 87 S.Ct. 903, 64 LRRM 2369 (1967). In the *Smith* case the United States Supreme Court specifically held that the authority of the National Labor Relations Board "does not destroy the jurisdiction of the courts under Section 301."

3.

Finally, Defendants contend that the Complaint fails to state a claim upon which relief can be granted. This contention is without merit, and amply answered by the authorities cited under paragraph 1 above.

WHEREFORE, premises considered, Plaintiff prays that Defendants' motion to dismiss be denied.

Respectfully submitted,

WARREN H. GREENE, JR.
150 E. 42nd Street
New York, New York 10017

ORGAIN, BELL & TUCKER
By /s/ JAMES W. HAMBRIGHT
James W. Hambright
Beaumont Savings Bldg.
Beaumont, Texas 77701

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, James W. Hambright, attorney for Plaintiff Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, hereby certify that service of the above Plaintiff's Objections to Defendants' Motion to Dismiss, and Memorandum of Authorities was made upon Chris Dixie, Dixie, Wolf & Hall, Suite 401, 609 Fannin St. Bldg., Houston, Texas 77002, attorney for Defendants Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, on the 12th day of October, 1971, by depositing true copy of same in the United States mail, postage prepaid, in an envelope addressed to him at the address shown above.

/s/ JAMES W. HAMBRIGHT
James W. Hambright

—ooo—

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

(Number and title omitted) (Filed: October 25, 1971)

BE IT REMEMBERED that in the above styled cause came on to be considered motion to dismiss filed herein by Defendants Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, and the Courts having duly heard and considered same, along with Plaintiff's objections thereto, and memorandum of authorities, it is therefore ordered that said motion to dismiss be and the same is hereby in all things denied.

Rendered and signed this *25th* day of *October*, 1971.

/s/ JOE J. FISHER
Judge Presiding

DEFENDANTS' ANSWER

(Number and title omitted) (Filed: November 3, 1971)

Now Comes Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Oil Chemical and Atomic Workers International Union, AFL-CIO, and answer the Complaint as follows:

I.

Defendants deny that the "Maritime Transportation Department, Gulf-East Coast Operations" is such an entity as can be a plaintiff herein separate from Mobil Oil Corporation, a New York corporation. Upon information and belief, Defendants also deny that the management headquarters and principal place of business of any appropriate legal entity is located in Jefferson County, Texas. Upon information and belief, Defendants show the Court that the top management headquarters, certain labor relations officials and other personnel responsible for the administration of the collective bargaining contract are located in the State of New York.

The second unnumbered paragraph of paragraph I of the Complaint is admitted.

The third unnumbered paragraph of paragraph I is denied to the following extent: Defendant Local No. 8-801 is a labor organization which does business and represents its members in several states, particularly in the State of New York, as in Jefferson County, Texas. Its members work on the high seas and at times in most of the ports of the East Coast of the United States. Defendant Local Union maintains its main office in the State of New York at 1 Beekman Street where it maintains its financial records, and receives the proceeds from check-off of dues transmitted to it by Mobil Oil Corporation. Defendant Local Union is certified as a representative of the unlicensed personnel in the deck, engine, and stewards departments of

the ocean going vessels operated by Plaintiff under the flag of the United States. The contract which constitutes the basis of this suit was negotiated and executed in the State of New York and is performable in that state, as well as many other states, including the State of Texas. Defendant Local Union is administratively a part of the International Union's District No. 8 and is not administratively a part of the International Union's District No. 4. District 8 is located in New York State and the East Coast. District No. 4 is located in parts of the States of Texas and Louisiana. The collective bargaining contract here involved is performed mostly upon the high seas and in states other than the State of Texas. The relative percentage of the working time of the employees in question in the territorial limits of the State of Texas is relatively minor. Except as stated above, Defendant Local Union admits that it does have an office located in Beaumont, Texas, as alleged.

II.

The jurisdiction of the Court is denied.

III.

Paragraph No. III of the Complaint is admitted.

IV.

Defendants admit paragraph IV of the Complaint.

V.

Defendants deny that the clause in question is unlawful under the right-to-work laws of the State of Texas. Defendants deny that Plaintiff has standing to seek a declaratory judgment, that such contract provisions are invalid and unenforceable, respectfully showing the Court that the agency shop clause affects only covered employees and their money. It affects no funds or operating conditions or other legitimate interests of the Plaintiff. In this connec-

tion, Defendants show the Court that Plaintiff executed the said contract in the State of New York with full knowledge of the nature of its operations and the location of its employees' work. Plaintiff agreed to the clause in question as a part of many mutual agreements, covenants and concessions by the parties to each other. Plaintiff has taken the benefit of the covenants and concessions made by Defendants and does not have standing to challenge said clause before this Court.

VI.

Defendants admit the substance of paragraph VI but deny that said clause authorizes or gives standing to Plaintiff to invalidate the agency shop clause to which it agreed. Furthermore, the clause provides that the parties will, in the event of invalidation by a court of competent jurisdiction, meet within ten days to attempt to work out a new contract on those matters that were invalidated. It was and is, therefore, the sense of said contract that both parties will develop any new agreement which is necessary and appropriate to accomplish the purposes of the agency shop clause.

VII.

Defendants deny that an actual controversy exists within the meaning of the Declaratory Judgment Act or that the matters alleged in paragraph VII of the Complaint constitute such an actual controversy.

AFFIRMATIVE DEFENSES

The collective bargaining contract in question has been entered into under the requirements and auspices of the Labor-Management Relations Act of 1947, as amended, an Act of Congress regulating interstate commerce. The contract was executed following a nationwide strike of the employees in question in the year 1969. At the time of the strike Defendant Local Union was certified as the exclusive

bargaining representative by the Regional Office of the National Labor Relations Board located in New York City and known as National Labor Relations Board, Region Two. Therefore, the interpretation and legality of the said contract is a matter to be decided by reference to federal law and not exclusively by reference to Texas law.

II.

The collective bargaining contract in question provides that any question of fact arising out of the interpretation or misapplication of this agreement or the alleged violation of the express terms of the agreement shall be submitted to a board of arbitration. It is provided that a decision of the majority of said board shall be final and binding upon the employees, the Company and the Union, and shall conclusively determine the controversy. It is further provided that if any party refuses to arbitrate or to comply with an arbitration award, the other party, in addition to all other rights and remedies, may declare the agreement null and void. Plaintiff should have, but has failed to, invoke the said arbitration procedure to settle the present controversy which includes questions of fact concerning the bargaining intention of the parties, questions of fact concerning the performance locale of the contract, as well as the legal ramifications of the various clauses of the contract.

III.

Mobil Oil Corporation is incorporated under the laws of the State of New York. Insofar as the present controversy is concerned, Mobil Oil Corporation operates a fleet of nine tankers by which it transports various petroleum products to and from various ports of the United States. A prominent phase of the Plaintiff's operations is the shipment of refined petroleum and chemical products from Plaintiff's refinery at Beaumont to various ports of the East Coast. Most of the products so shipped from the Beaumont refin-

ery go to the Port of New York or New England ports up to the State of Maine. Another phase of the Plaintiff's operations concerns the overseas shipment of petroleum and petroleum products, including Asiastic ports, as well as European. At the height of the Vietnam war as many as three of Plaintiff's nine tankers were under contract to the United States Government for such overseas shipments.

The affected employees work 85 days aboard ship followed by 37 days off duty. As stated, many of the employees are engaged in overseas voyages and in other activities on the East Coast, but at a maximum, an employee engaged in uninterrupted round trip voyages to and from the Beaumont refinery will be docked at Beaumont a maximum of approximately 18 hours once every 12 days, or 6% of the time. Upon information and belief, Defendants allege that the average percentage of the time spent by the affected employees within the territorial jurisdiction of the State of Texas in the performance of their duties is substantially less than 5%. The other 95% or more of their time is spent working in territories where union security clauses of the type complained of are lawful.

IV.

Defendants show the Court that in any event the agency shop clause is not illegal under the laws of the State of Texas as alleged in the Complaint.

V.

Defendants readopt and reallege all of the matters of fact set forth above and they show the Court that under the circumstances above stated, the decision whether the application of the agency shop clause in any given situation is or is not subject to Texas law or is or is not lawful under federal law is a matter exclusively entrusted by Congress to the primary jurisdiction of the National Labor Relations Board to make the first decision.

WHEREFORE, Defendants pray that the Complaint be dismissed.

DIXIE, WOLF & HALL

By /s/ CHRIS DIXIE
Chris Dixie

By /s/ JAMES P. WOLF
James P. Wolf
Suite 401, 609 Fannin St.
Building
Houston, Texas 77002
713/223-4444

Attorneys for the Defendants

CERTIFICATE OF SERVICE

I, Chris Dixie, certify we have served a copy of the foregoing Defendants' Answer and Affirmative Defenses on Mr. James W. Hambright, Attorney for the Plaintiff, by mailing a copy thereof to his office in the Beamont Savings Building, Beaumont, Texas, 77701, properly addressed this 1st day of November, 1971.

/s/ CHRIS DIXIE
Chris Dixie

PRETRIAL STIPULATION AND ORDER

(Number and title omitted) (Filed: June 26, 1972)

1.

JURISDICTION

Jurisdictional pleas of defendants, Oil, Chemical and Atomic Workers International, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International, AFL-CIO, have been overruled. This Court has jurisdiction of the parties. Defendants claim the Court lacks jurisdiction because, they assert, there is no actual case or controversy between the parties.

2.

PENDING MOTIONS

There are no pending undisposed of motions.

3.

CONTENTIONS OF PLAINTIFF

Plaintiff contends that the agency shop clause appearing in its labor contract with defendant Unions is unlawful under the right-to-work laws of the State of Texas, and should be declared invalid and unenforceable, while the remainder of the labor contract is in full force and effect.

4.

CONTENTIONS OF DEFENDANTS

A. There is no actual case or controversy in the constitutional sense sufficient to confer jurisdiction upon the Court.

B. The contract in question expires on July 31, 1972 so that in any case the matter will be moot at that time.

C. A statutory procedure before the National Labor Re-

lations Board exists for the adjudication of the validity of the agency shop agreement as applied to any particular employee in any particular state if, as and when an actual case or controversy concerning any specific employee should arise. The statutory procedure provides for a precise adjudication by an agency of experts created by Congress for the administration of the Labor-Management Relations Act of 1947, as amended. The appropriate scope of the agency shop clause in an interstate contract is peculiarly appropriate for determination by the National Labor Relations Board. Therefore, the Court in the exercise of a sound discretion should refrain from rendering a declaratory judgment.

D. Under all the circumstances of the case, including the fact that 95% of the working time of the affected employees is spent outside the State of Texas, the Texas statutes have no application to this labor contract.

E. Alternatively, under all the circumstances of the case, the Texas statute can be applied at most to those employees who have predominant contact with the State of Texas in their work and cannot be applied to those employees whose predominant contact with their jobs occurs outside the State of Texas.

F. The relevant Texas statutes do not by their own terms purport to have extra territorial effect.

G. Alternatively, if such statutes purport to have extra territorial effect, they have been preempted by the Labor-Management Relations Act of 1947, as amended.

H. Section 8(a) of Article 5154a, Vernon's Civil Statutes, prohibits the collection of a fee, assessment, or collection of a sum of money as a condition of employment only in circumstances where the employee is denied union membership by the union. This is so because the Manford Act, of which it is a part, expressly authorizes and preserves closed shop contracts in Texas.

I. Section 2 of Article 5207a and Section 1 of Article

5154g do not by their terms prohibit the collection of an agency shop fee where there is no compulsory union membership.

J. In the exercise of sound discretion, the Court should decline to render declaratory judgment because any declaration of rights and duties must be specifically tailored to a specific type employee who works within the State of Texas sufficiently to justify application of Texas law and no such specific employee exists as an actual case in controversy.

K. Alternatively, if the Court should conclude to render a declaration of rights and duties, the same should be carefully tailored to apply only to those employees who are subject to Texas statutes and to exclude all employees who are subject to the laws of other states or who perform predominant work on the high seas.

5.

Plaintiff does not agree that Defendants' contentions are necessarily pertinent to the issues in this case nor that they present defenses properly cognizable by the Court, nor that they are necessary to a decision in this case.

6.

It is stipulated that copies of the following documents will be received in evidence without further proof:

(a) Contract between the parties dated November 1, 1969 and expiring July 31, 1972

(b) Letter of date April 23, 1970, addressed to the Defendants and signed by John T. Knepper, Manager, Gulf-East Coast Operations with enclosed copy of notice to new unlicensed seamen

(c) Union newsletter dated July, 1971

(d) MOBIL MARINER, No. 61 dated July, 1971

(e) WELCOME ABOARD! (Handbook given to new employees)

(f) Photograph of Technical Building, Beaumont Refinery (Gulf-East Coast Operations Headquarters), from the West

(g) Opinion letter of the Attorney General of Texas No. WW-1018 dated March 14, 1961

(h) Copy of Unfair Labor Practice Charge filed with NLRB on September 30, 1969 in Case No. 23-CA-3440

(i) NLRB letter of date September 30, 1969 to Mr. John Knepper in Beaumont pertaining to Case No. 23-CA-3440

(j) Letter from Mr. Knepper to Mobil Tankers Officers Association dated May 7, 1970

(k) Labor contract, Radio Officers' Union of the United Telegraph Workers, AFL-CIO, March 1, 1970

(l) NLRB Trial Examiner's decision in Case No. 23-CB-1222 dated March 30, 1972

7.

The defendants will offer the following documents which will be received in evidence without further proof:

1. NLRB Decision in Case No. 2-AC-7 rendered June 17, 1970

2. Memorandum of Understanding executed at New York, October 30, 1969

3. Agreement between Plaintiff and Deck & Engineer Officers, executed in New York, December 8, 1969

4. Mobil letter, June 7, 1967

5. Mobil letter, September 19, 1968

6. Mobil letter, January 22, 1969

7. Mobil letter, April 8, 1969

8. Mobil letter, June 5, 1969
9. Mobil letter, June 24, 1969
10. Mobil letter, January 7, 1970
11. Mobil letter, April 1, 1970
12. Mobil letter, July 20, 1970
13. Mobil letter, October 12, 1970
14. Mobil letter, November 16, 1970
15. Mobil letter, January 13, 1971
16. Mobil letter, April 6, 1971
17. Mobil letter, July 19, 1971
18. Mobil letter, July 20, 1971
19. Mobil letter, August 16, 1971
20. Mobil letter, January 27, 1972
21. Mobil letter, February 3, 1972
22. Mobil Mariner, December, 1966
23. Mobil Mariner, March, 1967
24. Mobil Mariner, February, 1968
25. Mobil Mariner, October, 1968
26. Mobil Mariner, November, 1971
27. Miscellaneous excerpts from ship's logs furnished by Company to Union (to show movement of ships and time to port).

8.

In addition to the documents listed, the parties reserve the right to offer further evidence and documents as may be necessary for rebuttal or impeachment or otherwise relevant.

9.

The probable length of the trial of this case is two days.

Approved, Signed and Entered this 26th day of June, 1972.

/s/ Joe J. Fisher
Chief Judge, United States
District Court

Approved:

Warren H. Greene, Jr.
150 E. 42nd Street
New York, New York 10017

Orgain, Bell & Tucker
By: /s/ James W. Hambright
James W. Hambright
Beaumont Savings Building
Beaumont, Texas 77701

Attorneys for Plaintiff

Dixie, Wolf & Hall
By: /s/ Chris Dixie
Chris Dixie
Suite 401, 609 Fannin Street Building
Houston, Texas 77002

Attorneys for Defendants

MEMORANDUM WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Number and title omitted) (Filed: July 12, 1972)

The above entitled cause came on for trial at a regular term of court and the cause having been submitted to the Court and the Court having considered the pleadings, the evidence, the briefs of the parties, and being fully advised in the premises, now makes and files its findings of fact and conclusions of law:

FINDINGS OF FACT

1.

Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, the Plaintiff herein, operates eight (8) oceangoing tankers documented under the laws of the United States.

2.

Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, which is affiliated with Defendant Oil, Chemical and Atomic Workers International Union, AFL-CIO, is the exclusive collective bargaining representative of all unlicensed seamen employed on board Plaintiff's tankers.

3.

Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, which is the Plaintiff herein, has its management headquarters in Jefferson County, Texas and has been so located since April 1, 1962. Mobil Oil Corporation is a New York corporation and has qualified to do business in the State of Texas.

4.

Defendant Maritime Local No. 8-801 of Oil, Chemical and

Atomic Workers International Union, AFL-CIO maintains offices in Beaumont, Texas and in New York, New York.

5.

Plaintiff and Defendants negotiated a collective bargaining agreement in the State of New York to be effective from November 1, 1969 to July 31, 1972.

6.

A draft of the collective bargaining agreement dated November 1, 1969 was executed in the State of New York.

7.

The collective bargaining agreement was typewritten and prepared in final form and re-executed in the State of Texas.

8.

The State of Texas collects unemployment compensation insurance payments on all personnel employed on board Plaintiff's tankers, regardless of the designation of home address or shipping port.

9.

Payments of unemployment compensation insurance have been made to the State of Texas since April 1, 1962 on account of all personnel employed on board Plaintiff's tankers.

10.

Two hundred and eighty-nine (289) unlicensed seamen are employed by Plaintiff.

11.

One hundred twenty-three (123) unlicensed seamen out of two hundred eighty-nine (289) have reported to Plaintiff that Texas is their State of residence.

12.

One hundred fifty-two (152) unlicensed seamen out of two hundred eighty-nine (289) have requested Plaintiff to list Beaumont, Texas as their shipping port.

13.

Payroll records are maintained in Texas for all personnel employed on board Plaintiff's tankers, and Plaintiff places funds on board its tankers in Texas for use in paying wages due to personnel employed on board Plaintiff's tankers.

14.

Plaintiff makes remittances in Texas of F.I.C.A. taxes as well as federal income taxes withheld from the pay of all personnel employed on board Plaintiff's tankers.

15.

Plaintiff employs, or approves the employment of, all unlicensed seamen at its headquarters in Beaumont, Texas.

16.

Plaintiff makes monthly remittances of union dues deducted pursuant to authorization from the wages of unlicensed seamen, with such remittance being mailed by Plaintiff from Texas to the New York office of Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO.

17.

All grievances filed on approved grievance forms by unlicensed seamen employed on board Plaintiff's tankers are submitted to and considered by Plaintiff's manager at his office in Beaumont, Texas.

18.

All of the unlicensed seamen employed on board Plaintiff's tankers are regularly present in the State of Texas inasmuch as Plaintiff's tankers are on voyages beginning or ending at Texas ports in their normal trade.

19.

At all times some of the unlicensed seamen employed by Plaintiff are in the State of Texas, either on board tankers operated by Plaintiff or on paid vacation receiving pay from Plaintiff.

20.

A more substantial part of the administration of the collective bargaining agreement and the performance thereof occurs and takes place in the State of Texas than in any other State.

21.

The acts performed in the State of Texas in the administration and performance of the collective bargaining agreement are such that the State of Texas is intimately concerned with the collective bargaining agreement and with the employees working thereunder.

22.

Plaintiff advised Defendants that the agency shop clause of the collective bargaining agreement is unlawful and invalid because of violation of the Texas right-to-work statutes, and Plaintiff advised the personnel employed on board Plaintiff's tankers that membership in labor unions is voluntary.

23.

Defendants rejected Plaintiff's position and issued written notice in July, 1971 to unlicensed seamen employed on board Plaintiff's tankers stating that membership in Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, or pay-

ment of dues to Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO is a condition of their employment and that Defendants will cause any non-complying employees to be fired.

24.

A bona fide controversy exists between the parties with respect to the validity of the agency shop clause (Article I, ¶ 2b) in the collective bargaining agreement between Plaintiff and Defendants.

25.

The enforcement or attempted enforcement by Defendants of the agency shop clause (Article I, ¶ 2b) in the collective bargaining agreement directly involves Plaintiff's employees in the State of Texas.

26.

The enforcement or attempted enforcement by Defendants of the agency shop clause (Article I, ¶ 2b) in the collective bargaining agreement directly involves Plaintiff's operations and activities in the State of Texas.

27.

The enforcement or attempted enforcement by Defendants of the agency shop clause (Article I, ¶ 2b) of the collective bargaining agreement directly involves Plaintiff's administration of said collective bargaining agreement in the State of Texas.

CONCLUSIONS OF LAW

1.

An actual bona fide controversy exists between the parties so as to give the Court jurisdiction of this cause under § 301 of the Labor-Management Relations Act of

1947, as amended (29 U.S.C., § 185(a) and (c)), for the purpose of securing declaratory judgment pursuant to the Federal Declaratory Judgment Act (28 U.S.C., § 2201).

2.

The controversy is not moot.

3.

The statutory procedure before the National Labor Relations Board does not preclude the Court's consideration of the issues in this case or prevent the Court from entering a declaratory judgment herein.

4.

The Texas right-to-work statutes have not been preempted by the Labor-Management Relations Act of 1947, as amended, and the validity of the Texas right-to-work statutes with respect to the execution or application of a collective bargaining agreement with an agency shop clause is upheld by Sec. 14(b) of the Labor-Management Relations Act of 1947, as amended (29 U.S.C. § 164(b)).

5.

The application and attempted application of the agency shop clause (Article I, ¶ 2b) of the collective bargaining agreement to all of Plaintiff's operations and employees contravenes the Texas right-to-work statutes, being § 8a of Article 5154a; § 2 of Article 5207a; § 1 of Article 5154g, Vernon's Annotated Civil Statutes.

6.

The agency shop clause (Article I, ¶ 2b) of said collective bargaining agreement is void and unenforceable. *Accord*, Opinion No. WW-1018 of the Texas Attorney General issued on March 14, 1961.

7.

The agency shop clause (Article I, ¶ 2b) of said collective bargaining agreement is severable and its invalidity does not affect the remaining provisions of the contract.

8.

Plaintiff is entitled to the relief sought, and judgment should be entered accordingly.

SIGNED AND ENTERED this 12th day of July, 1972.

/s/ JOE J. FISHER
Chief Judge, United States
District Court

JUDGMENT

(Number and title omitted) (Filed: July 12, 1972)

This action came on to be tried before the Court and the evidence adduced by the parties having been heard and the Court having made its findings of fact and conclusions of law:

It is hereby ORDERED, DECLARED and ADJUDGED that:

1.

Article I, ¶ 2b of the collective bargaining agreement dated November 1, 1969 between Plaintiff and Defendants, reading as follows:

"2. UNION SECURITY

b. For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date.",

is void and unenforceable.

2.

Article I, ¶ 2b is severable from the remainder of the collective bargaining agreement and the invalidity of said Article I, ¶ 2b does not affect the other provisions in said contract, all of which remain in full force and effect.

3.

Costs are adjudged against the Defendants.

To which action, order and ruling of the Court Defendants then and there in open court excepted and are allowed their exceptions.

SIGNED and ENTERED this *12th* day of July, 1972.

/s/ JOE J. FISHER
Chief Judge, United States
District Court

MOTION FOR NEW TRIAL AND AMENDMENT OF JUDGMENT AND MOTION FOR AMENDED AND ADDITIONAL FINDINGS

(Number and title omitted) (Filed: July 24, 1972)

Under Rules 52 and 59, Federal Rules of Civil Procedure, Defendants, Local No. 8-801, Oil, Chemical & Atomic Workers International Union, AFL-CIO, and Oil, Chemical & Atomic Workers International Union, AFL-CIO, move for a new trial and alternatively for amendment of Judgment and likewise for additional and amended findings as follows:

I.

Under Rule 52, Defendants request the additional and amended finding that employees' work time is spent entirely aboard deep sea tankers and that such vessels are located on the high seas or in ports other than ports of the State of Texas approximately 80% to 90% of the time.

II.

Defendants request an amendment of the Judgment itself, to conform to the findings and conclusions of the Court and to requested additional findings in this respect: Nowhere in the findings of fact or conclusions of law does the Court hold that an agency shop clause may be bargained for application to *any* employees in the bargaining unit. To the contrary, conclusion No. 5 says expressly that the application and adopted application to *all* of Plaintiff's employees contravenes the Texas statutes. From this it appears that perhaps a properly tailored contract clause applicable to some but not all of Plaintiff's employees would be lawful under the Court's declaratory judgment. Neither the findings, the conclusions, nor the Judgment clarifies to what extent and upon what basis agency shop provisions may lawfully be applied or how such a clause may lawfully be drafted for application to some of Plaintiff's employees.

III.

Because of the deficiencies in the findings and Judgment above stated, the declaratory judgment has not settled the controversy. To the contrary, it has induced uncertainty in the respects stated above.

IV.

In addition, Defendants advise the Court that the declaratory judgment has caused disagreements between the parties in the bargaining of a *new* contract which, of course, is not before the Court. Because of this consequence of the declaratory judgment, the same should be set aside. Defendants advise the Court that they have proposed a modified form of agency shop to the Company based upon the location of work of employees but the Company, so far as Defendants can tell, does not wish to bargain on this but adheres to the ruling of this Court as controlling the terms of the new contract.

V.

Alternatively, the Court's Judgment should be set aside because it is erroneous in law and in fact in failing to give effect to the location of work of employees as an appropriate, relevant factor which legalizes the clause as to the employees in question.

Respectfully submitted this 21st day of July, 1972.

DIXIE, WOLF & HALL

By: /s/ CHRIS DIXIE
Chris Dixie
Suite 401, 609 Fannin
St. Building
Houston 2, Texas
713/223-4444

Attorneys for Defendants

ORDER DENYING DEFENDANTS' MOTION FOR NEW TRIAL, GRANTING AN ADDITIONAL FINDING OF FACT, AND AMENDING A CONCLUSION OF LAW

(Number and title omitted) (Filed: August 14, 1972)

1.

Defendants' Motion for a New Trial is hereby in all things denied.

2.

Defendants' Motion for Amended Findings is hereby granted in part, and this Court's "Memorandum with Findings of Fact and Conclusions of Law" as signed and entered on July 12, 1972 is amended and supplemented as follows:

(a) Between Finding of Fact No. 18 and 19 there shall be addded a new Finding of Fact, numbered 18(a) which shall state as follows:

> "Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters."

(b) The Conclusion of Law No. 5 shall be amended so as to add the words "any or" immediately prior to the words "all of Plaintiff's operations and employees". As amended said Conclusion of Law No. 5 will read:

> "The application and attempted application of the agency shop clause (Article 1, ¶ 2b) of the collective bargaining agreement to any or all of Plaintiff's operations and employees contravenes the Texas right-to-work statutes, being § 8a of Article 5154a; § 2 of Article 5207a; § 1 of Article 5154g, Vernon's Annotated Civil Statutes."

RENDERED AND SIGNED this 14th day of August, 1972.

/s/ JOE J. FISHER
Judge Presiding

APPELLANT'S DESIGNATION

Date: November 28, 1972

Mr. John Tucker
4th Floor, Beaumont Savings Building
Beaumont, Texas 77701

Re: No. 72-3272—Mobil Oil Corp., et al.
v. OCAW, et al.

Dear Mr. Tucker:

In the above case Appellants transmitted to you today their Appellants' Brief.

Under Rule 30, Rules of Appellate Procedure, Appellants designate the following portions of the Record for printing in the Appendix:

	Original Record Page No.
Caption	1
Complaint	2-5
Defendants' Motion to Dismiss	10
Order Denying Defendants' Motion to Dismiss	16
Defendants' Answer	17-21
Pretrial Stipulation and Order	90-95
Memorandum With Findings of Fact and Conclusions of Law	123-129
Judgment	130
Defendants' Motion for New Trial and Amendment of Judgment and Fact Findings	131-132
Order Denying Motion for New Trial and Making an Additional Finding and Amending a Conclusion	145-146
Transcript of Proceedings (Appendix 147)	

Testimony of John Knepper	31, 126, 172, 215-216
Testimony of Donald Sanhueza	219-240-253
Testimony of John Perrio	255-257-263

We have made arrangements with Mr. Jerry Bloxom of Beaumont, Texas, to print the Appendix and you will, therefore, please deliver the Record to him when you serve your brief.

We are sure Mr. Bloxom is familiar with Fifth Circuit Rules which strictly require the filing of the Appendix within twenty-one (21) days after Appellee's brief is filed.

Yours truly,

DIXIE, WOLF & HALL
By: /s/ CHRIS DIXIE
Chris Dixie

CD:eys
cc: Mr. Edward W. Wadsworth, Clerk
U.S. Court of Appeals
Fifth Circuit
Room 408 - 400 Royal Street
New Orleans, Louisiana 70130

Mr. Jerry Bloxom, Court Reporter
Federal Courthouse
Beaumont, Texas 77701

APPELLEE'S DESIGNATION

Date: November 30, 1972

Re: 72-3272—Mobil Oil Corporation, et al v.
OCAW, et al—United States Circuit Court
of Appeals, Fifth Circuit

Mr. Jerry Bloxom, Court Reporter
P.O. Box 3481
Beaumont, Texas 77704

Dear Mr. Bloxom:

We have Mr. Chris Dixie's letter of November 28, with respect to instruments to be included in the Appendix.

In behalf of plaintiffs, Mobil Oil Corporation, et al, we request that you include the following:

(1) Plaintiffs' objections to defendants' motion to dismiss and memorandum, pages 13 and 14 of the Record;

(2) All of the testimony, both direct, cross, redirect, etc., of the witnesses, John Knepper, Donald Sanhueza, and John Perrio.

Very truly yours,

ORGAIN, BELL & TUCKER

/s/ JOHN G. TUCKER
John G. Tucker

JGT:DFG
cc-Mr. Edward W. Wadsworth, Clerk
U.S. Court of Appeals: Fifth Circuit
Room 102, 600 Camp Street
U.S. Court of Appeals Courthouse
New Orleans, Louisiana 70130

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[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MOBIL OIL CORP., MARINE TRANSPORTATION DEPT., GULF-EAST OPERATION, *Plaintiffs,* *vs.* OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO, ET AL, *Defendants.*	CIVIL ACTION No. 7413

TRIAL PROCEEDINGS

Heard at: Beaumont, Texas
On: June 26 and 27, 1972

[2] **APPEARANCES**

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BE IT REMEMBERED that the following proceedings were had in the above-styled and numbered civil cause before the Honorable Joe J. Fisher, United States District Judge, on June 26 and 27, 1972, to-wit:

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[4] MORNING SESSION
6-26-72

The Court: Please be seated.

Mr. Hambright, we are ready to proceed.

Mr. Hambright: May I make a brief opening statement, Your Honor?

The Court: Yes. Please go to the lectern.

OPENING REMARKS

BY MR. HAMBRIGHT:

If it please the Court, this case involves a labor contract

between the plaintiff, Mobil Oil Corporation, Marine Transportation Department, Gulf East Coast Operations, and two Unions, the Local 8-801 of the Oil, Chemical & Atomic Workers International Union, AFL-CIO, and the Oil, Chemical & Atomic Workers International Union, AFL-CIO itself. [5] This labor contract contains, among other provisions, a section entitled "Union Security", and in this section of the contract there appears what is known as an agency shop clause which requires that employees upon going to work for the company within thirty-one days must join the Union or else pay Union dues in lieu thereof and this appears as Article 1, Section 2-b of the contract. The Attorney General of the State of Texas has ruled that this sort of clause is invalid in controvention of the Texas Right-to-Work statute. There are a number of those statutes. The Taft-Hartley Act of the United States of America provides that it is permissible for states to maintain their right-to-work law and I think the importance to us in the case is the wording of the Taft-Hartley Act which is the Section 14b, it's quite note [6] worthy, which is widely known throughout the land in that the Unions have been attempting to have that revoked for many years and Congress has never seen fit to do so. But what it says can be capsuled into one sentence, and if the Court would permit me to quote this, to explain our position, the controlling sentence in Article 14b says: "Nothing in this sub-chapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory in which the execution or application is prohibited by state or territorial law." The statute, therefore, speaks in the disjunctive, if the labor agreement was either executed in the state or received application in the state and if the state has prohibited that nature of agreement, then it is [7] void under federal labor law. So in the case at bar we will show the Court that the labor contract which covers the employees in this particular bargaining unit does con-

tain this prohibited provision and ought to be declared invalid and on either one or both grounds we will show that it was executed within the State of Texas, at least in part, but we will show independently of that as an alternative ground for recovery that it received application in the State of Texas within the meaning of this provision of law.

So the defendants have raised various defenses, some of which have been disposed of by this Court already when it overruled their motion to dismiss this case as not being properly under the section 301 of the Taft-Hartley Act. This has been disposed of and other ancillary matters of that nature. So I believe I have covered [8] the principal and primary parts of our statement, I would add that it has been stipulated that the Court does have jurisdiction of the parties and there is no pending and undisposed of motions.

The Court: All right, do you care to make a statement at this time, Mr. Dixie?

Mr. Dixie: Yes, sir, Your Honor.

OPENING REMARKS

By Mr. Dixie:

If the Court please, this is a case for declaratory judgment, that is all the relief they ask for. The contract that they want the Court to rule upon will expire at the end of July of this year. The evidence will show that the parties are bargaining now for a new contract.

I feel constrained to call that to the Court's attention because we have not had a pre-trial hearing in [9] this case and the Court might wish to bear this in mind, the early termination of this contract.

Now the bargaining unit in question concerns members of the crews of various tankers operated by the Mobil Oil Corporation between primarily Beaumont, Texas on the one end and sometimes other Texas ports, and ports along

the New England Coast, as well as other ports on the Atlantic Coast. If the Court would like to have just a thumbnail statement of what this case is about, the plaintiffs are attempting to extend the application of Texas law to the Statue of Liberty, and it is the defendant's position that this is not a proper interpretation or holding by this Court. There is no case, state or federal, that I am aware of or could find which passes upon the exact problem in this case, but there are several principles [10] of law that I think apply to this case which caused this Court in the exercise of sound discretion to decline to render the declaratory judgment and, in the alternative, if you decide to render the declaratory judgment then the Court should carve with great care where you propose to apply the Texas law and where the law of the United States may apply and where the law of other states may apply. One of the points that we raise here is the question of the lack of a case or controversy, sufficient to give this Court jurisdiction to pass upon the particular issues that the plaintiffs tender to the Court. Now in one respect it may be said that there is a case or controversy insofar as the plaintiffs claims that the contract is unlawful as applied to anybody in the bargaining unit.

We will have evidence today that one of these tankers is under charter [11] to the United States Government. It hasn't been in Texas for fifty days, it is over in the Pacific now and it is on its way to Honolulu and Vietnam and it won't be back for six months. We don't think it is very sensible to apply Texas law to that situation.

Now the important thing I want to get over to the Court about this discussion is that we don't have the case of Joe Blow, a seaman, who doesn't want to join the Union. We don't have any such case. We just have a discussion between the parties in which the company says the whole contract is illegal as applied to everybody. The defendant says that is not true. The contract does have certain legitimate applications, as to what legitimate applications it

has the Court does not have sufficient facts before it or events to raise a case or controversy in the constitutional [12] sense. In the alternative, if there is jurisdiction, we suggest to the Court that in the exercise of sound discretion this Court should not render iffy or hypothetical opinions of Joe Blows that may or may not arise in the future. Another area of discretion for this Court is the question of your interpretation of Texas law. No Texas case says that an agency shop clause is illegal and however much you might be inclined to think that it is possibly legal you are called upon in this case to make a decision, a first impression in a federal court on declaratory judgment. No Texas case has held that it was the intention of the Texas legislature to give extra-territorial effect to the Texas law. Now in this connection there are two questions. The first one is what is the power of the State of Texas to apply its law to the high [13] seas or to the Port of New York. That is one question, but an ever more pertinent question here is what was the intention of the Texas Legislature in enacting this and other laws with reference to extra-territorial application. We have a later case by the Supreme Court of Texas to which we respectfully refer the Court. Marmon v. Mustang Aviation, Inc., 430 S.W. 2d, 182, decided in 1968.

The Court: What is the page?

Mr. Dixie: 182, Your Honor. Where the Texas Supreme Court holds that as a matter of Texas statutory construction we do not imply a legislative intention to go outside the boundaries of the State of Texas. To the contrary, the statute must show on its face a legislative intention to have extra-territorial application and so on. So when we get to that rule of law the Court is called [14] upon to decide in declaratory judgment for the first time whether or not this Texas statute was intended to have extra-territorial effect.

By the way, the Texas courts have plenty of jurisdiction to pass upon the extent of this statute and the validity of

this contract. It is one of the exceptions to the pre-emption doctrine, they can decide the extent of their state law as applied to contracts in this state. So we say they are in the wrong state. I mean the wrong court. There is another question that we interpose here, and we think that the Court should consider it and that is, there is a question of federal law. We are supposed in these federal cases to come up with contract rules and decisions that reflect a policy of the federal labor laws and this policy we have drawn from the statutes, the [15] Supreme Court has told us on many occasions. We have here a federal law that says that an agency shop is lawful except where prohibited by a state law. For example, in the State of New York an agency shop is lawful. I can think of no reason why an agency shop contract is not lawful on the high seas, and this Court is called upon to select as between federal law and state law. Although in Texas members of the Texas Bar are disposed to make that agency shop as intensively morally bad. I hope the Court will bear in mind that a Union, just like the federal courts, need money to operate and a Union must serve the non-Union man as well as the Union man, and there is not anything so terrible, as I see it, about the idea that everybody ought to have to pay equal, uniform and reasonable dues for the services that are provided. Of course, Congress has made a de [16] cision that these states will have the right to prohibit and the minority of the states do. Now if this defendant were to request this plaintiff to discharge anybody for failing to join the Union, if that were to happen and if that individual were to file a charge before the National Labor Relations Board, the National Labor Relations Board will pass upon the proper scope and application of the interstate situation and to what extent Texas law applies and to what extent the law of the high seas applies and to what extent New York law applies. Here again, since declaratory judgment is a discretionary remedy, we outline to the Court that in the exercise of sound discretion the Court might wish to defer the decision

in this case to the possible case that might arise which can be adjudicated by the Labor Board. But if you decide to rule on [17] the case, then we have this suggestion to the Court. With the evidence we will show that these ships travel between northern ports and Texas ports with some variation and that about ten percent of the time of employees is spent in Texas, about ninety percent of the time of the employees is spent on the high seas or in port in other states and if the Court feel absolutely like some law must be applied to everybody in sight, uniformly, then there is less contact with Texas than there is with the rest of the world and we suggest that it is not appropriate under all of the circumstances of this case for the Court to give complete application to Texas law in the face of the fact that ninety percent of the time is worked by the men in question outside the State of Texas, and we will also show the Court how they are subject to the maritime juris [18] diction as is the employer of—that the contract was—the Union was certified in New York, the contract was negotiated in New York, it was executed in New York. The plaintiff is doing wish thinking when they try to put the execution of the contract in Texas. It is true that an administrative department is located in Beaumont, that is one factor that pushes against us in this case, but when you add up the whole case we say that the totality of the contract of these men predominates outside the State of Texas and a small minority of the contracts occur within the State of Texas, and under these ci cumstances if you get to the merits you ought to render judgment for the defendant. And that, I believe, will outline in general what our position is.

The Court: Mr. Dixie, you made a reference that the Court might refer [19] this case to what court? I didn't follow that. Just before you were talking about the propriety of the Texas Court and of this Court's deciding the matter because of slight exposure to Texas.

Mr. Dixie: If the Texas courts, the Texas State Court has jurisdiction to pass upon the extent of an application

of the Texas Right-to-Work Law, that is the first step. If the case actually arises of a man who doesn't want to join the Union voluntarily, that is subject to the jurisdiction of the National Labor Relations Board.

The Court: I see. All right, we will make some decision as we go along. We will proceed.

Mr. Hambright: If it please the Court, in view of the large number of points he raised, may I add one more section to my opening statement?

The Court: Yes, you may.

[20] **REBUTTAL REMARKS**

By Mr. Hambright:

In the first instance, Mr. Dixie has emphasized what he refers to as the time in Texas on the basis of ten percent versus ninety percent, and we would like for the Court to understand our position in regard to this. I do not think this is a proper approach to take. He is selecting one individual employee and he is stating that the man, referred to as, I believe, Joe Blow, may be in Texas ten percent of the time and the other ninety percent of the time he may be elsewhere. The true inquiry is in terms of all of the men in the bargaining unit, Your Honor, and the proof will show that there are about two hundred ninety odd men in the bargaining unit, and the proof will show that not ten percent of the time but probably, well, over half the time there will be some individual in the [21] bargaining unit present within the State of Texas, and the proof will, for instance, I understand that day before yesterday perhaps, maybe three days ago, there were two ships in here at once, in this eight tanker fleet, and when you add in the time, the total group of employees in the bargaining unit you get up well over half the time there are people physically present here who are subject to the laws of Texas, working on these vessels. So I think that would be our first point.

Secondly, the proof would show that one hundred percent of the time, one hundred percent of their employees are present in the State of Texas who are in the bargaining unit in this sense, over half the people are residents of the State of Texas, and the proof will show that aboard these ships the men work ninety days and they have a thirty day vacation, so at all times you have [22] a large number of individuals subject to this labor contract present within the State of Texas, either working aboard vessels or on vacation, but in any event, receiving pay, receiving money from their employer and so the connection with the State of Texas is not limited merely to the hypothetical case of one individual employee. But when you look at the total work force you perceive that there is one hundred percent connection and a constant connection with the State of Texas. Now on these authorities and law points referred to by Mr. Dixie the Court has already passed on about fifty percent of that. The other part we do not consider to be of any controlling importance against the position taken by the plaintiffs in this case. We feel confident that the authorities pose no impairment to the relief requested and we can support this with a brief at the proper time, if such is [23] necessary. But I think the main point Mr. Dixie attempted to show was this matter of approaching mootness or contract termination, and I would like to take just one moment of the Court's time to give the Court our feelings about it. We think it is a very serious matter. It is not rendered any less serious by the fact that this particular labor contract will expire July 31st. The fact of the matter is that this contract began on November 1st, 1969. It was about two months after that, in January of 1970, that my clients advised the Union that they had determined that there was a void section in their labor contract, just one void section on the agency shop section and in April of 1970, the facts will show that this was delivered, this objection was delivered in writing to the Union and the company repudiated this void section in April of 1970, and with a letter to the Union, copy of the [24] notice to the Union, they gave notice to all employees who might come and obtain work for this employer that Union membership was voluntary and they asked the employees to sign this specifically stating he acknowledged that Union membership was voluntary. There was no response from the Union in April of 1970, when this was done. There was no response the entire remainder of the year of 1970, and it was 1971 before the Union took action on this and at that time, in July of 1971, the contract being then some midway along its term, the Union sent out a notice telling the employees they must join the Union and if they did not they would be fired. So they would have the company terminate these employees and this was sent to the members of the bargaining unit. This happened in July of '71. There is some period of time necessary for the company to obtain information about this [25] letter, and it was not until about August of 1971 that the company became aware of the Union's position and within thirty days, Your Honor, this case was filed in your court in September of 1971, and this case was filed and the reason I am developing this is to show the Union's position as I take it now is, well, the contract expires in July, so this Court shouldn't have it, but I would like to just in a very brief way to advise the Court what happened following the filing of this suit in September of 1971.

The Union was served the same day as the suit was filed. Service was perfected on the International the very next day it was perfected on the Local. The President of the Local, Mr. Perrio, I believe, is in the courtroom, and he was served in his office in Beaumont, Texas. The International representative was served the day before, in Port Arthur, Texas, so there was no delay there. But then the Union came in and asked for delay of about five weeks before they were called up to file an answer in this case and for various reasons, some of the delay was allowed by the Court, but this carried us along into October. They moved to dismiss this case and the Court considered that, ruled

against that, and so it was finally November 2nd before the Union ever answered. November 2nd was the first time after the Union filed the answer in November, November 2nd, the Court set this case for pre-trial hearing in December of last year. December of 1971, and Mr. Dixie advised the Court that there had been no pre-trial hearing and I must respond to that and say there was a pre-trial hearing, but Mr. Dixie, he did not appear at that pre-trial hearing in December of '71. The Court did conduct a pre-trial hearing, however, and it was obvious that nothing [26] much could be done and so nothing was done except we filed a motion for summary judgment. We got that filed in early February, I believe, and the first thing that happened, the Union then moved for additional delay of about one month to consider this motion for summary judgment and filed an opposition to it. So this has brought it into March and April, April came around, at which time the Court established this hearing today. So in view of the swiftness with which this plaintiff moved once the controversy became obvious and the pains it took to obtain prompt service and the case moved forward with reasonable dispatch, I think that it comes as an improper request that the Court decline to act or delay acting or not act because of the approaching mootness. The mootness was not brought about by the plaintiff and I also question that there will be a true mootness because, as Mr. Dixie, I [27] believe, has indicated, these parties are engaged now in collective bargaining toward a successor labor contract for another period of years. Therefore, to some degree, I think an adjudication of this matter would be in order for that additional reason.

The Court: All right, do you care to make any further statements, Mr. Dixie?

Mr. Dixie: I don't like to get into quarrels with counsel and I will just concern myself with saying that I just don't agree with that whole course of litigation that counsel has outlined to the Court. This defendant got about two weeks from this Court time to answer the questions by witnesses

that were in New York and Beaumont, and I was in Houston, and the papers had to go around. You gave me two weeks. I got two weeks to answer the motions for summary judgment. I have been ready at all times, [28] there has been no delay, but the rule of law doesn't depend on that. If the contract expires the case becomes moot as a matter of law. I have a case here where the contract expires during the pendency of the appeal of the appellate court, the appellate court remanded it back with instructions to dismiss, that the matter was moot.

The Court: All right, we are ready to proceed. Mr. Hambright, who do you have next?

Mr. Hambright: May we invoke the rule at this time?

The Court: We will have all the witnesses who know themselves to be witnesses and present in the courtroom at this time to please stand. All of you who know yourself to be witnesses, if there are any questions, the attorneys will designate who may not be standing that you want to be used as witnesses.

[29] Mr. Dixie: I only have two witnesses, Your Honor, and they are two-party defendants, would I be permitted to keep one for each?

The Court: Yes.

Mr. Dixie: Is there any objection on keeping Mr. Perrio and Mr. Sanhereza, neither one of them is actually—

The Court: Are they all standing who will be witnesses,

Mr. Hambright: Yes.

The Court: You may lower your hands, Gentlemen, the rule has been invoked, which means you have to remain out of the hearing of the trial. You may remain about the court building but not in the courtroom. The Marshal will show you where you may stay.

Mr. Hambright, you may proceed.

Mr. Hambright: Your Honor, we will call John Knepper.

[30] JOHN KNEPPER, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Hambright:

Q. All right, would you state your name, please, sir?

A. My name is John T. Knepper.

Q. Mr. Knepper, where is your residence, please sir.

A. I live at 965 Wisteria Drive, in Beaumont, Texas.

The Court: Do you have any Problems, Mr. Dixie?

(Reporter's Note: Whereupon an off-the-record discussion was had at this time.)

Mr. Hambright: If it please the Court, we will stipulate that Mr. Perrio and Mr. Sanhereza, I think, have been ruled to be allowed to remain in the courtroom and Mr. Knepper and [31] Mr. Shanigan could remain in the courtroom.

The Court: All right. .

By Mr. Hambright:

Q. Mr. Knepper, would you tell us what is your occupation, please, sir?

A. I am manager of Gulf East Coast Operations, a portion of the main transportation department of Mobil Oil Corporation.

Q. All right, sir, and where is your office?

A. My office is located within the boundaries of the Mobil Oil Beaumont Refinery.

Q. Is that in Jefferson County, Texas?

A. Yes, sir.

Q. Mr. Knepper, I believe that this is a building you occupy in company with your administrative staff and various employees, is this correct?

A. Yes, sir, that's correct.

Q. Would you describe for the Court briefly where this building is at the refinery and which offices are used by you and your people?

A. Well, it is known as the Technical Building, [32] it is one of a block of three buildings just inside the gate facing the front of the property and our offices are on the second floor of the Technical Building.

Q. Mr. Knepper, would you tell me the broad functions of your organization as conducted at this place?

A. Well, our purpose is to husband and operate a fleet of eight petroleum tankers.

Q. You say a fleet of eight petroleum tankers?

A. Yes.

Q. All right, sir, do these tankers have a Master on each vessel?

A. Yes, sir.

Q. All right, sir, and to whom does this Master report as his immediate authority in the organization?

A. They report to the Marine Superintendent, whose name is Captain L. A. Papich.

Q. Is this Marine Superintendent, Mr. Papich, is he a resident of Beaumont?

A. Yes, sir, he is.

Q. All right, does he have an office there in the same place with you?

[33] A. Yes, sir, he has an office adjacent to mine.

Q. All right, to whom does Mr. Papich report?

A. He reports to me.

Q. Are you responsible then through Mr. Papich for the operation of these eight vessels?

A. I am.

Q. Now does Mr. Papich have an additional staff at this place?

A. Yes, sir, he does.

Q. Would you tell me the names and titles of some of these people that work for Mr. Papich?

A. Well, there is Mr. Ollie Johansen, who is the Port Steward, and who assists him by supervising more or less the food service and housekeeping functions on the ships through the Chief Steward, and handles provisioning of the vessels, taking care of services they need in the way of laundry, general housekeeping matters. There is also Mr. Carl Carlson, whose title Inventory Supervisor, and his job is to coordinate the ordering and delivering of spare parts and various stores that are required by the ships. There is a Mr. R. F. McLemore, who helps him in [34] the operational matters as far as layout of cargoes and scheduling and matters of that sort.

Q. Do these gentlemen, through Mr. Papich, work for you?

A. Yes, sir, they don't report directly to me, they report to him and he reports to me.

Q. But if something goes wrong on these provisionings or spare parts or housekeeping services, any of the many things related to the running of these ships are you not the man that would be the one to hear about it and have to take action?

A. Yes, sir, I would be.

Q. Now, Mr. Knepper, do you have other people in the Beaumont office reporting to you other than Mr. Papich?

A. Yes, sir, I do.

Q. Would you tell me about—would you tell me, for instance, the administrative supervisor? Could you tell me what that office is and the functioning of it?

A. Well, my administrative supervisor is Mr. Horace Streeper, and he serves more or less as the office manager, he has some girls reporting to him that handle communications and filings, [35] and he is also—does more or less staff work regarding budgeting and information regarding our expenditures and general business matters of that sort.

Q. Would you call him the money man?

A. That's what I often call him, yes.

Q. So that I understand you, budgeting matters and expenditures in connection with running these ships are handled in Beaumont, Texas, under your supervision?

A. Yes, sir, that's correct.

Q. All right, sir, now in this regard, do you have other people reporting to you beyond those you have named?

A. Yes, sir, two others that report directly to me. The superintendent of maintenance and repair and also the personnel supervisor.

Q. Well, now the maintenance and repairs, is this in the area of engineering?

A. Yes, primarily it has to do with shipyard overhauls and various repairs in addition to the general supervision of the engineering department on the ships as far as maintenance and repairs and operations are concerned.

[36] Q. Who is the head of that phase of your business?

A. Mr. C. J. Dayton.

Q. And I take it he has people that report to him?

A. Yes, he has an assistant and also a clerical person.

Q. And is his operation conducted wholly here in Beaumont, Jefferson County, Texas, under your control?

A. Well, yes, sir, it is controlled here, but, of course, the repairs might be—

Q. They might authorize them?

A. Well, they may be done elsewhere.

Q. Repairs could be made here or elsewhere?

A. That's correct.

Q. But their office would have to authorize them to pay for them and determine how much and to what extent, is this what you mean?

A. That's correct, that's the only way it can be done.

Q. All right, sir, now, Mr. Knepper, let's talk about employees for a minute. Do you have a personnel supervisor?

[37] A. Yes, sir, I do, Mr. Shanaghan is personnel supervisor.

Q. Is that—he is present in the courtroom?

A. Yes, sir, that is he.

Q. All right, sir, where, in brief, what are the duties of the personnel supervisor?

A. Well, he has a group of employees who schedule the assignments of the people to ships and make arrangements for them to join ships and schedule them on vacation, because our employees work ships for a period of time and then have a period of paid leave, it is necessary to set up an effective schedule where you have people rolling over, if you will.

Q. Do I understand, Mr. Knepper, that the assignment

of employees to the vessels is conducted by Mr. Shanaghan here in Beaumont, and under your supervision?

A. Yes, sir, that is true.

Q. Is this true of all of these vessels?

A. Yes, all are treated the same.

Q. All right, sir, go ahead with the rest of his duties.

A. Well, as I say, these people plan assignments, [38] also keep all of the personnel records, the records for each individual employee as to where he has been employed, what's the rate of pay and so on. When they make the assignments they have to send an assignment letter to the ship's Master so he will know what rate of pay to pay the man and what days he has been paid for and which days he has not and so on.

Q. Okay.

A. Mr. Shanigan also acts as staff to me in employee relation matters dealing with arbitration, grievances, negotiations, that sort of thing.

Q. All right, sir, you mentioned that he had assistants, I will ask you what are some of the—does he have a personnel assistant and who is this individual?

A. Well, he has Mr. Clarence Toby, who is records supervisor, and reporting to Mr. Toby are three persons who make assignments, both for officers and members of this bargaining unit that we are talking about.

Q. Could it be that—would you tell us how many people report to Mr. Shanigan?

A. There is five, I believe.

[39] Q. All right, sir, in addition to your supervision over your ship Masters and your budgeting and expenditures, your engineering and repair and your personnel, I will ask you whether or not you have occasion for a few

additional employees to report to you who may work elsewhere than in the Beaumont office?

A. Yes, sir, there are. We have two branch offices, one in New York City, which has three employees, and one in Paulsberry, New Jersey, which has three employees.

Q. Do these persons at the branch offices report to you?

A. Not directly, the people in New York report to Captain Sorrels, who is in Paulsberry, as do other people who are in Paulsberry, Captain Sorrels reports to Captain Papich.

Q. So the people in the branch office report to—is that Captain Papich that you identified a moment ago as living in Beaumont, Texas?

A. Yes, sir.

Q. Where the office is?

A. That's correct.

Q. Through Captain Papich do you control the functions of these branch offices?

[40] A. Yes.

Q. Do these people in the branch offices get their pay checks from your organization, are they part of your budgeting or budget?

A. They are part of my budget, our payroll is handled as a service for us through the company's computer center. As a matter of efficiency we are billed for their service. I don't write out their pay checks, no, sir.

Q. That computer service for most of your employees is located in Dallas, Texas?

A. Either Dallas, most of them are in Dallas.

Q. Most of your employees in Dallas?

A. No, sir, on the East Coast it would be elsewhere.

Q. All right, sir, now—

A. On the matter of their pay, I administer their pay, I determine whether they get raises, when they don't get raises. I can hire them and discharge them.

Mr. Hambright: May I ask the Court if the witness is speaking loud enough?

The Court: He is speaking all [41] right.

Mr. Hambright: I am having a little bit of trouble getting some of those answers, hearing him myself.

Q. All right, Mr. Knepper, in connection with this operation do you have labor contracts in force with the defendants named in this lawsuit, I won't go through the technical identification, but it is Local 8-801 of the OCAW and also the OCAW International?

A. Yes, sir, we do.

Mr. Hambright: Would you mark that, please.

The Clerk: Plaintiff's Exhibit No. 1.

By Mr. Hambright:

Q. Do you need any of your other papers?

A. I would like to have the affidavits that are in my briefcase to refresh my memory.

(Reporter's Note: At this point in the proceeding there was a short pause.)

By Mr. Hambright:

Q. Is this a true copy of the labor contract that [42] is the subject matter of the action here, Mr. Knepper?

A. Yes, sir, this is the working copy that is distributed generally.

Mr. Hambright: May we have that admitted?

Q. What is the date of that contract, Mr. Knepper?

A. I believe it is—

The Court: November 1st, '69.

The Witness: November 1, 1969.

By Mr. Hambright:

Q. And the expiration date?

A. July 31, 1972.

Q. All right, does that labor contract cover the seamen who work aboard these eight tankers?

A. Yes, sir, the unlicensed seamen.

Q. What other groups of employees does it cover?

A. Well, the licensed deck and engineering officers and radio officers are not covered by this agreement.

Q. Have you compiled data showing the number [43] of employees as of June 23rd, 1972, who are subject to this contract?

A. Yes, sir, we did do that.

Q. Have you also checked out the residence of these employees on a per state basis?

A. Yes, sir, we did that.

Q. Those others appear on your company records in the Beaumont office?

A. Yes, sir.

Q. What is the difference between a residence of an employee and a shipping port of an employee?

A. Well, a residence is, of course, where he makes his home. The shipping port is one of three ports that an employee selects when he comes to work for us, which may be Providence, Rhode Island, New York City, or Beaumont, Texas, and the purpose of designating a shipping port is to have a data point to compute employees' expenses in

traveling to join a ship. Very briefly, if the man joined the ship in Philadelphia, and the shipping point is Beaumont, he would receive X expenses from Beaumont to Philadelphia.

Q. All right, sir, did you prepare a typed-up list of these different states and the number of [44] employees residing in each?

A. Yes, sir, I did so.

Q. Also designating the shipping port?

A. Yes, sir.

Mr. Hambright: Would you mark that as P-2?

The Clerk: Plaintiff's Exhibit No. 2.

(Reporter's Note: Whereupon it was marked as Plaintiff's Exhibit No. 2.)

Mr. Dixie: Counsel, what number is that in the pre-trial order?

Mr. Hambright: This is—this may not be numbered, Mr. Dixie, it has not yet been offered. We are going to offer it when he identifies it. It is an up-to-date showing of the number of people from each state brought down to July 23rd.

By Mr. Hambright:

Q. Now, Mr. Knepper, what is the total number of employees in this bargaining unit under the labor contract identified as Exhibit 1?

[45] A. As of June 23rd, 1972 it was 289.

Q. Of those employees how many are resident citizens of the State of Texas?

A. 123.

Q. Do you have the information on several other states and, if so, would you advise the Court?

A. Yes, sir, there is sixty employees residents of New York, 21 of New Jersey, 16 of Florida, 13 of Louisiana, 10 of Maine, 10 of Rhode Island, and there were--excuse me, 36 other employees who lived in 16 other states or territories. No more than six in any of those.

Q. All right, now, under here the designated shipping ports of this group of employees, how many is designated at Beaumont, Texas as their shipping port?

A. Our records show 152 at Beaumont, Texas.

Q. How many in Providence, Rhode Island and New York?

A. Thirty for Providence, and One hundred and seven for New York.

Mr. Hambright: We offer this, Your Honor, as the tabulation of the testimony just given.

[46] The Court: All right, it will be accepted.

(Reporter's Note: Whereupon it was received in evidence.)

Mr. Dixie: I call the Court's attention to the fact that we didn't have the benefit of this in the pre-trial order.

The Court: All right, you may proceed.

By Mr. Hambright:

Q. Now, Mr. Knepper, have you checked into your records to see what the total payroll was during the year of 1971?

A. Yes, sir, I have done so.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit No. 3.

(Reporter's Note: Whereupon it was marked for identification as Plaintiff's Exhibit No. 3.)

By Mr. Hambright:

Q. If it please the Court, to avoid other objections as to the appearance of this information [47] on the pre-trial order, I would propose to prove these items by this witness before offering the exhibit as to illustrate his testimony, Your Honor.

The Court: All right, you may do so.

By Mr. Hambright:

Q. Mr. Knepper, the manner of paying these employees, would you first tell us without using figures just briefly how are these people paid for their work?

A. Well, when the seaman is assigned to a ship the Captain is furnished certain payroll data so he can run a payroll on his crew while they are aboard.

Q. Excuse me, where does the Captain get this data?

A. From our office in Beaumont.

Q. All right, sir.

A. It is generated there.

Q. All right.

A. He then runs a payroll on the ship and periodically pays his people in cash and employees who wish to can request what we call a draw check, [48] which means that the Captain will send a request to the payroll office in Dallas, which performs our payroll record-keeping, and some disbursements for it, and they will send a check to his bank or his wife or his dependent, whoever he may designate. When he leaves the ship he is entitled to a vacation and also in almost every case I would say in every case probably he is entitled to vacation.

The Court: Keep your voice up, you are letting it trail off.

The Witness: Yes, sir. He is entitled to vacation. His

vacation check is prepared in our Beaumont office. It is a check that is drawn on the First Security National Bank of Beaumont, and transmitted to the man. After his vacation he comes back to work and there may be a brief period of time when he is due pay for just standing by waiting to join the ship. If so, why he would receive a check either from Beaumont, or perhaps from the New York office, if he happens to [49] be a man that ships out of the Eastern ports. This is basically the way they receive their pay.

Q. All right, sir, now looking at those various items, in 1971, about how much money was paid in regard to vacation, I believe you testified this would be checks drawn on the First Security Bank in Beaumont, Texas?

The Court: Just a minute.

Mr. Dixie: Your Honor, I want to complain a little bit, we are fixing to validate a summary exhibit that I haven't seen before. I am aware that I have a perfect objection that the books and records are the best evidence if I haven't been given an opportunity to see the summary exhibit. I don't want to slow this trial down. I was wondering if I can at least have the exhibit in my hand while this interrogation is going on.

Mr. Hambright: We have no objection.

The Court: All right, if you will [50] furnish it to counsel, please, and you may reserve your objection until later, Mr. Dixie, if you want a little time to study it.

Mr. Dixie: I thank the Court.

By Mr. Hambright:

Q. What are the totals on the vacation checks, Mr. Knepper?

A. Well, in round numbers, $1,365,000.00.

Q. All right, now is this for the thirty days when a man is off the vessel after having worked ninety days?

A. Yes, sir, basically.

Q. Is this what you mean when you say vacation?

A. Yes, although I would point out to you that this is for the entire work force of the fleet, this includes the officers as well.

Q. I understand.

A. Yes.

Q. And this is handled through your office here in Beaumont, Texas?

A. That's correct.

Q. All right, sir, now on the cash supplied to [51] the Masters aboard ship for disbursement to the employees, what was the figure on that in 1971?

A. Again in round numbers, $1,994,000.00.

Q. Where did that cash money come from, Mr. Knepper?

A. Well—

Q. Here in Beaumont? Where do you get physical possession of the currency?

A. Delivered to the ships by armed guards, who take the money from the First Security National Band and deliver to the Captains of the ships.

Q. All right, sir, now I believe you testified that the Captain keeps that aboard the vessel and pays the men aboard ship?

A. That's correct.

Q. All right, how about these allotments that I—I understand that it is a device where a man designates so much of his pay to be mailed to a wife or a dependent or so forth, how much money was handled through allotments during the year?

A. Yes, well, allotments are drawn checks on this piece of paper we had a lot of—some will draw checks, they totaled $1,117,000.00.

[52] Q. Now where did that money come from? What office originated those checks?

A. Our Dallas payroll office drew those.

Q. Dallas, Texas?

A. Yes, sir.

Q. All right, sir, now was this done pursuant to arrangements from your office here in Beaumont?

A. Yes, sir, it is services for which we pay a service fee.

Q. All right, sir, now how much federal income tax and social security deductions were made by the Dallas payroll office during 1971?

A. $1,431,00.00.

Q. Now, Mr. Knepper, are these figures to which you have just testified the same as were included in your affidavit attached to the motion for summary judgment furnished to Mr. Dixie last February or March?

A. Yes, sir, they are essentially the same except for some rounding and the fact that we combined the income tax and the social security figures first.

Q. What is the grand total of those amounts of [53] money that were handled through your office or through the Dallas office under your direction for 1971?

A. $5,907,000.00.

Q. All right, sir, now turning your attention to the New York office for a moment. I believe you testified that certain payments were handled out of the New York office. I think you said they were for stand-by time and I will ask you also if your claims section for maintenance and cure

and disability, sickness, things of that nature, is that handled out of the New York office?

A. Yes, sir, in the marine department claims section there are claim adjusters who perform the service to us, they handle the sickness and accident, injury claims. They do draw vouchers and pay money to our employees as a service for us.

Q. Well, with respect to your organization here in Beaumont, is this New York claim handling on sickness and maintenance and cure, is this in the nature of or similar to what an insurance company might do for Texas employers?

[54] A. Yes, sir, I believe so.

Q. What is the total amount of money in 1971 that was handled by the New York office for all causes in respect to these employees?

A. My records show $69,700.00 is the sum.

Q. All right—

The Court: Just a minute, Mr. Hambright, I think we will recess here. We will recess the trial that is in progress at this time until 1:00, or 1:15. We will say 1:15. We will resume the trial at that time. The witness and the parties and the attorneys may be excused until that time.

Mr. Hambright: Thank you.

The Court: The Marshal will advise the witnesses outside, if there are some.

(Reporter's Note: Whereupon the Noon recess was taken and Court resumed.)

[55] AFTERNOON SESSION

The Court: Please be seated.

Have you seen Mr. Dixie?

The Marshal: No, Your Honor, I haven't.

The Court: You might take a look out there, he may be around. Have you seen him, Mr. Hambright?

Mr. Hambright: No, sir, Your Honor.

(Reporter's Note: At this point there was a short pause in the proceedings.)

Mr. Dixie: I am sorry, Your Honor, I got lost on the freeway. I made a wrong turn. Please excuse me.

The Court: That is all right. You may proceed.

By Mr. Hambright:

Q. Just prior to the Noon recess, Mr. Knepper, we were talking about some financial disburse [56] ments, I believe, and we have a document marked Plaintiff's Exhibit 3, which you have identified as being a calculation prepared under your direction, and for the purposes of my questions. I will again ask you what is the total dollar figure, do you have a copy of that before you, sir?

A. Yes, sir.

Q. What is the total dollar figure which was attributed to Texas?

A. $5,907,000.00.

Q. And what is the total dollar figure that we have attributed to New York through the main office?

A. $69,700.00.

Q. Have you made a calculation as to the ratio and percentage between those two figures and, if so, what did you find?

A. The ratio between New York expenditures and the Beaumont expenditures is approximately one to ninety-nine.

Q. So that the New York figure would be somewhere around one percent of the total?

A. Yes, sir.

[57] Q. I will ask you, Mr. Knepper, is this in general typical of the way it has been going thus far in 1972?

A. Yes, sir, as far as I know.

Q. Is it fairly representative of the way it went in 1970 and 1969?

A. Yes, sir, I believe these are typical figures for this operation.

Mr. Hambright: We do offer then what has been marked as Plaintiff's Exhibit 3 to illustrate this testimony.

The Court: All right, you may make the offer.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 3 was received in evidence.)

By Mr. Hambright: Would you mark this, please?

The Clerk: That will be Plaintiff's Exhibit 4.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit 4 for identification.)

By Mr. Hambright:

Q. Mr. Knepper, I show you what has been marked [58] as Plaintiff's Exhibit 4, and I will ask you to identify that, please, sir.

A. This is a booklet entitled, "Welcome Aboard", which we produced to give some orientation to new employees. That gives them some information that is useful to their dealings with us.

Q. Is this handed out to all new employees?

A. Yes, sir, it is.

Q. Is it published under your direction and control?

A. Yes, sir, it was written and published in Beaumont.

Q. Can you tell us where this is printed up?

A. I believe this particular booklet was printed for us in Dallas. It was written in Beaumont.

Q. Written in Beaumont and printed in Dallas?

A. Yes, sir.

Q. You are referring to Dallas, Texas?

A. Yes, sir.

Q. Would you please refer to page 11 of this publication entitled "Welcome Aboard"?

A. Yes, sir.

[59] Q. What does it say on page 11, with regard to new employees?

A. Well, page 11 tells them how they will get their mail.

Q. What does it say?

A. It says: "Mail—mail is forwarded to each port in advance of arrival of the ship. Your mailing address is John Doe, S/S and the name of the ship, Mobil Oil Corporation, Gulf-East Coast Operations, Post Office Box 3444, Beaumont, Texas 77704."

Mr. Hambright: We offer this as Plaintiff's Exhibit 4.

The Court: It will be accepted in evidence.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 4 was received in evidence.)

By Mr. Hambright:

Q. Is there any other kind of pamphlet similar to "Welcome Aboard" that is put out in one of your branch offices or is this the only one you use?

A. No, sir, this is the only one.

[60] Mr. Hambright: Would you mark that as P-5, please?

The Clerk: Plaintiff's Exhibit No. 5.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 5 for identification.)

By Mr. Hambright:

Q. Mr. Knepper, I show you what is marked Plaintiff's Exhibit 5, and would you please identify that for the Court?

A. This is a copy of a paper we call the "Mobil Mariner". The "Mobil Mariner", which is like an employee's newspaper for the people in the fleet. This particular one is No. 61, July, 1971.

Q. All right, sir, would you exhibit that so that the Court might see the face of it for the purposes of my question, somehow, maybe I can give you—will you tell me where this is published?

A. Well, this is written and published in Beaumont, Texas.

Q. Under your supervision and direction?

[61] A. Yes, sir, that is correct.

Q. Does this go to all employees in the bargaining unit, covered by the labor contract that is the subject matter of this lawsuit?

A. Yes, sir, it does.

Mr. Hambright: We offer that, Plaintiff's Exhibit 5.

The Court: All right, it will be received.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 5 was received in evidence.)

By Mr. Dixie: What was the particular part of that that you called his attention to?

Mr. Hambright: I asked the witness to identify it and

the place of publication and on page 1, I called his attention to.

Mr. Dixie: Thank you.

By Mr. Hambright:

Q. Would you clarify that, please? State where that is published and what it says at the top of the front page.

[62] A. I am not sure—

Q. On page 1, at the top, does it show—

A. Published for employees, Gulf-East Coast Operations and under that it says Mobil Oil Corporation, Post Office Box 3444, Beaumont, Texas, 77704. Does that—

Q. Yes.

Now, Mr. Knepper, speaking about your employees for a moment, I believe you testified that all personnel procedures are conducted in your office in Beaumont, Texas, by yourself and various assistants, is this correct?

A. Yes.

Q. Where are your employees hired?

A. Well, in Beaumont, Texas, and also in our New York office.

Q. If someone was hired in Beaumont, Texas, would the matter be exclusively within your control?

A. Yes, sir.

Q. Would you make the decision whether this man was hired or refused employment?

A. Well, I would or the subordinate might be [63] delegated.

Q. Mr. Shanigan is your personnel director that you identified this morning. Is he a resident of Beaumont, Texas?

A. He is, yes.

Q. Now if someone were hired in the New York office would that come within your jurisdiction in any way, and, if so, how?

A. If he had been hired from the New York office he would be hired by one of the many people in our branch office there who reports to Captain Papich and Captain Papich reports to me.

Q. Captain Papich being the Beaumont resident who works in your office?

A. Yes, sir.

Q. And you say he would be hired by the personnel in the branch office in New York, is that one of these individuals you identified this morning that works for you in New York?

A. That is correct, yes, sir.

Q. And you set their own pay scale and so forth?

A. That is correct, yes.

Q. All right, sir, now looking back over the [64] period of time let's say since the inception of the present labor contract on November 1st, 1969, and stretching from that time down to today, would it be fair to say that you have employed as new employees or re-employed, employees, as many as two or three hundred people?

A. This is over the entire life of this agreement?

Q. Yes.

A. Yes, sir, that is a fair statement.

Q. All right, sir, would 300 come closer than 200?

A. I would think it would, yes.

Q. All right, sir, out of this group would you give the Court your best estimate as to the number hired in Beau-

mont directly and those hired in New York by your branch man who reports to you?

A. Well, it is a very difficult problem, probably sixty percent in Beaumont, and forty percent in New York.

Q. All right, sir, now those who are hired in New York, are they or not in many cases reemployees of persons who formerly worked for your company?

[65] A. Yes, sir, that happens very frequently in our business.

Q. Is it a fact that the New York applicant who seeks employment at your branch office have to obtain clearance from Beaumont? Do you approve the application before they are hired?

A. Yes, the applications are approved and also before the offer of employment is made, determination is made in Beaumont whether or not any vacancy we have is more conveniently filled from New York or from Beaumont.

Q. All right, sir, now over this same period of time, November of '69 to date, can you give me an estimate of how many employees are subject to the labor contract in question who has been terminated for just cause?

A. I think I have a notice, but I need to take a look at it.

(Reporter's Note: Whereupon there was a short pause.)

A. Yes, I believe 79 employees have been terminated for cause during that period.

Q. 79?

A. Yes, sir.

[66] Q. Would you please tell the Court where the decision was made to terminate each one of these 79 people? Who made the decision and how it was effectuated?

A. Well, the final decision is made in Beaumont. Maybe a case or two where a Captain would discharge someone on

ship and then we would review the case and the final decision is made in Beaumont, and on some occasions the initial decision—

Q. Who would be the likely participant in such a decision in Beaumont?

A. Well, we have a personnel committee who reviews the case and then come to me with their recommendations and I make the final decision yea or nay.

Q. Does that personnel committee consist of employees who reside in Beaumont, and work in the office here?

A. Yes, sir, they all are people that I mentioned this morning, as reporting to me.

Q. I don't know if you put a total on that, the number of people that report to you here [67] locally.

A. No, I didn't.

Q. Would you enlighten me on that, Mr. Knepper?

A. There is four people that report directly to me.

Q. I am speaking total working force in your office here, that's in your engineering, budgeting, personnel, all of those different groups.

A. There are eighteen such people.

Q. All right, sir, now on these decisions to discharge a person, are those decisions exclusively within your control here in Beaumont, Texas?

A. Yes, sir.

Mr. Hambright: If it please the Court, I am laboring under my first bifocal glasses, which I got last Friday. It is clogging me down on my finding my way through some of these documents.

The Court: We will be as understanding as necessary.

By Mr. Hambright:

Q. Now, Mr. Knepper, in regard to your testimony that some monetary expenditures are made for [68] sickness and disability, maintenance and cure, things of this nature, which I believe you testified was handled by a claims division in New York City, is this correct?

A. Yes, sir, that is correct.

Q. Would you tell me, and I think you said that was a minute part of the overall expenditure, but directing yourself to that, did you or not have an occasion within the last few months to have a man by the name of Parsons, who did have such a claim?

A. Yes, sir, that's correct.

Q. Where is Mr. Parsons' residence, what is his home address, if you know?

A. I don't know the city, he lives in Florida though.

Q. All right, sir, did he become disabled or alleged that he was disabled within the last say year or so?

A. Yes, sir, he had a cardiac condition.

Q. All right, sir, excuse me, did you add something to that?

A. No.

Q. Did he receive certain payments from this [69] claim division in New York?

A. Yes, he did.

Q. Did your office in Beaumont, Texas have any part in the determination of how much he got and this sort of thing?

A. Yes, part of it, you know, the basic schedule of benefits is included in the labor agreement and part of it is statutory.

Q. Did you or not have an occasion to issue any instructions to the New York branch as to the manner of handling payment with Mr. Parsons?

A. Yes, sir, they can only administer a claim if we assigned—don't assign a man to them for a claim, the claims administration won't do anything.

Q. Is your assignment of this matter to New York, is that similar to what we sometimes refer to as employing a claim adjuster?

A. Yes, sir, I believe that is a good one.

Q. Did Mr. Parsons, therefore, receive any payments by the company letters from New York?

A. Yes, he did.

Q. How did Mr. Parsons get along with his [70] disability?

A. Well, it was disability that really meant that he had to find a different kind of work. He couldn't do—he couldn't exert himself any longer and I would say he was very unhappy about losing his—

Q. Ultimately was it necessary to take any action in this case?

A. Well, we had to terminate his employment because he was unable to be a seaman any longer.

Mr. Hambright: Would you mark this, please?

The Clerk: Plaintiff's Exhibit No. 6.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 6 for identification.)

By Mr. Hambright:

Q. Mr. Knepper, I show you what has been marked as Plaintiff's Exhibit 6. Would you please identify that for the Court?

A. Yes, sir, this is a letter that we wrote to Mr. Parsons, which we had to explain to him [71] that because of medical opinions we had received we couldn't continue his employment any longer.

Q. I notice the letter is dated February 25th, 1972, and it is signed by you.

A. That is correct.

Q. Is this part of the ordinary sequence on matters of this nature?

A. Yes, sir, this is our regular practice.

Q. Are you the man that made the ultimate decision or not to fire him?

A. Well, I am.

Q. Or to terminate him for disability?

A. I am.

Q. I notice your letter refers to an examination by a Dr. Stewart. Would you please identify Dr. Stewart?

A. Dr. Stewart is a physician employed by Mobil Oil Corporation, whose clinic is in the Beaumont Refinery.

Q. Is he a native or at least a resident citizen of Jefferson County, Texas?

A. Yes, sir.

Q. Dr. Stewart?

A. Yes.

[72] Q. All right, I notice your letter refers to a Dr. Lombardo. Would you please identify Dr. Lombardo?

A. Dr. Lombardo is a heart specialist, also a resident of Beaumont.

Q. He is likewise a resident of Beaumont?

A. Yes, sir.

Q. Did he examine this man at someone's request, your's or the man's?

A. Yes, sir, at our request actually.

Mr. Hambright: May we offer that as Plaintiff's Exhibit 6?

The Court: All right.

(Reporter's Note: Whereupon Plaintiff's Exhibit 6 was received in evidence.)

By Mr. Hambright:

Q. Mr. Knepper, do you recall an occasion back in September of 1969, when your organization here in Beaumont and the Union representing the employees had a disagreement?

A. Well, I venture to say we may have had one then, I don't know what you are alluding to.

[73] Q. With specific reference to an alleged complaint by the Union in regard to vacation benefits which resulted in an NLRB charged filed by the Union. Do you recall that incident?

A. A Labor Board judge?

Mr. Hambright: Would you mark this, please?

The Clerk: Plaintiff's Exhibit No. 7.

A. Yes, sir, I recall this incident now.

Q. All right, sir, the document has been marked for identification as Plaintiff's Exhibit 7. It is dated September 30, 1969. Did you receive that from the Houston, Texas Regional Office of the National Labor Relations Board?

A. Yes, sir, this was transmitted to us.

Q. I believe your name is on there in Paragraph (d) as —is that your name?

A. Yes, John Knepper, Manager.

Q. And the address of the employer is stated on there. What address do they give for the employer?

A. Our mailing address, P. O. Box 3444, Beau [74] mont, Texas.

Q. And who signed this charge with the Labor Board, down under the declaration?

A. James R. Watson, Jr.

Q. Do you know of your own knowledge that he is an attorney in Houston, Texas? Do you know that, Mr. Knepper?

A. I believe that is the case, yes, sir.

Q. Do you know of your own knowledge that he was then a partner or at least an associate of Mr. Chris Dixie?

A. I believe that could be true.

Q. Did you get a letter from the Labor Board transmitting this charge and telling you to defend yourself? Did that letter show a copy went to Mr. Dixie's law firm in Houston?

A. I believe it did, yes, sir.

Mr. Hambright: We offer this Labor Board charge as P-7, Your Honor.

The Court: All right.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 7 was received [75] in evidence.)

By Mr. Hambright:

Q. Now, Mr. Knepper, following the execution of the labor contract marked Plaintiff's Exhibit 1, or at least its

effective date on November 1st, 1969, did you thereafter come into information that one section of that contract was in question?

A. Yes, sir, I did.

Q. What was the information that you received?

A. Well, I was advised that a review of Mobil counsel had reason to believe that that clause was illegal in the State of Texas, and that as the Texas employer we would be violating Texas law if we continued with it.

Q. All right, sir, now in that regard could we just take a copy of Plaintiff's 1 and draw a box around the provision in there that they said was—I think it's page 2—the section is the second on 2b. Would you just draw a box around that, please?

A. (Witness indicating).

Q. All right, now, Mr. Knepper, in connection [76] with this, did you receive a copy of the Texas Attorney General's opinion No. WW1018?

A. Yes, sir, I did.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit No. 8.

Mr. Hambright: Thank you, ma'am.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 8 for identification.)

By Mr. Hambright:

Q. Did you receive a copy of this opinion?

A. Yes, sir.

Q. Now, Mr. Knepper, about what month did you first learn of this problem?

A. Well, it was late in December or early in January of 1969, or early January of 1970.

Q. Did you take any action with the Union representatives?

A. Yes, sir, we did meet with the local Union officers and—

Q. Did you tell them what your position was?

A. Yes, sir, we did.

Q. Did you tell them that you were or were not [77] going to enforce this clause, what did you tell them?

A. Well, we told them that we didn't think that either they or we should, they or we should be in position of doing something that's illegal, that we had, as far as we could see, no choice but to discontinue the enforcing of that particular section of the contract.

Q. Do you recall the names of the Union representatives who you met with in January of 1970 and gave this word to?

A. I believe this was the International representative named Ed Steiger. Mr. Perrio, Mr. Sanhueza.

Q. All right, sir.

A. There were two other Union officers but I am not a little—I am a little unclear at the moment but as to whether Mr. Maston was there or not.

Q. Did the Union make any immediate reply?

A. Well, of course, they were unwilling to abandon the charges and they wanted to really look into it to see what, I suppose, their people say [78] about the legality of it and so forth.

Q. Did they ever get back to you in writing or officially about that prior to April of 1970?

A. No, although we discussed it informally from time to time.

Q. In April of 1970 did you or not deem it necessary to take further action?

A. Yes, sir, we wrote them in a letter in April of '70, saying we just could no longer honor that particular clause.

Q. And did you at this time, when you wrote this letter, did you enclose anything with it?

A. Yes, sir, we enclosed a form letter which we would inform them that we would have handed to each new employee and ask them to sign it as evidence he had received it. That form letter said that the membership, at the bottom there, was voluntary, but they would continue to be members.

Mr. Hambright: Mark this, please.

The Clerk: This is Plaintiff's No. 9.

(Reporter's Note: Whereupon it was marked Plaintiff's No. 9 for identi [79] fication.)

By Mr. Hambright:

Q. This is marked Plaintiff's 9, is that a true copy of what you sent to the Union on April 23rd, 1970?

A. Yes, sir.

Mr. Hambright: I call the Court's attention to a statement in the letter of April 23rd, 1970, to the Union advising the Union that Article 1, Section 2b of the collective bargaining agreement is invalid under Texas law and the company's statement that it believed that neither itself nor the Union should put itself in the position of enforcing provisions contrary to law.

Q. Is this the substantial import of that letter?

A. Yes, sir.

Q. Now the certificate that you have on there, is this what you present to employees and ask them to sign?

A. Yes, we do.

[80] Q. Would you—it is very short, would you just read that, Mr. Knepper, and keep your voice up at the end of each sentence there?

A. Yes, sir. It says: "Unlicensed employees in the Gulf-East Coast fleet are represented for collective bargaining purposes by SVTMA Local 8-801, OCAWIU. As an unlicensed employee, the Collective Bargaining Agreement between the Union and the Company determines your wages, hours, and other conditions of employment. In order that you may have a voice in these matters you may wish to become a member of this Union. Such a membership is voluntary on your part and the Company neither encourages nor discourages membership. Under the current agreement if you become a member of the Union, you must continue to be a member and/or pay the regular Union dues during the term of the Agreement. I acknowledge and understand the foregoing." And there is a place for signature and the date.

Q. All right, sir, now the last sentence tells them, as I read it, that membership was voluntary, [81] but if they do become a member then they have to stay a member or else pay the dues?

A. Yes, that's correct.

Q. Is this your interpretation of that?

A. Yes, sir.

Q. Now looking at your—

Mr. Dixie: May I clarify a point here for the court? In this Article 2 the witness drew a block around Paragraph (b) and it is my understanding that Paragraph (b) is the one that is in issue before this Court, is that right, and not the rest of Article 2?

Mr. Hambright: I am not so sure of your terminology of what may be in issue, but I will say that the one with

the box around it is the invalid portion which we seek to have declared invalid in this case. Other parts of the labor contract could become an issue in the case for various reasons.

Mr. Dixie: Then you are not trying to declare invalid Paragraph (a) or (c)?

[82] Mr. Hambright: May I have one moment?

The Court: All right.

Mr. Hambright: The portion of Article 1, Section 2, with the box drawn around it is Paragraph (b), little (b). This is what we have asked the Court to declare void and unenforceable. It is an agency shop clause and may we stipulate that it is a typical shop clause before I finish the response—

Mr. Dixie: I think we can call it that, Your Honor. I can't answer counsel, you will say that you are not attacking (a) or (c)?

Mr. Hambright: I will continue with the statement of admission if that is all right.

The agency shop clause of said paragraph (b) is what we are attacking. Sub-paragraph (a) is what we term as maintenance of membership clause. It ties in with the letter Mr. Knepper [83] wrote which says if they once become a member of the Union, which is voluntary under the company's position, but once they become a member they will continue to be a member or pay dues. The company is not seeking to set aside that in this litigation. Paragraph (a) is not under attack in the pleadings on file in this case.

I have personal reservations about that, but the Court may, on its own motion, decide that Paragraph (a) should be adjusted, but this has not been a question.

Paragraph (c), the escape clause, likewise is not under attack.

May I continue now with Mr. Knepper?

The Court: Yes.

By Mr. Hambright:

Q. Now, Mr. Knepper, have you used this certificate in connection with hiring each new employee since the date you notified the Union you were going to do so in April of 1970?

[84] A. Yes, sir, the people who actually have the personal contact with the new employees have been instructed to do so under my knowledge and have not failed to do so.

Q. All right, sir, now to clarify one thing about your letter and terminology, your letter is addressed to the Sacony-Vacuum Tankermen's Association Local 8-801 OCAW IU. The Union has changed its name since that date, has it not?

A. Yes, that's right.

Mr. Hambright: May we stipulate, Mr. Dixie, that the addressee of that letterhead is in fact the Local Union, which is the defendant in this case?

Mr. Dixie: Yes.

By Mr. Hambright:

Q. Now, Mr. Knepper, after you inaugurated this procedure in April of 1970, of obtaining this acknowledgment from the employees as to the voluntary nature of Union membership, did you receive thereafter for the rest of the year 1970 receive any dispute or controversy from the Union about the letter?

[85] A. Well, they complained.

Q. The remainder—excuse me.

A. They complained about it, yes, they didn't like it, they would have liked us not to use it or something different.

Q. Was this in the nature of an oral or verbal complaint or did they write you?

A. They wrote and asked for a meeting, which we discussed it and we discussed it at other meetings.

Q. All right, sir, did they take any final action the rest of 1970 and on down until July of 1971?

A. No, they didn't really take any action on the matter.

Q. During that period of time, which I guess would be from April of '70 to April of '71, plus another two or three months, did you continue to use the voluntary certificate?

A. Yes, sir.

Q. All right, sir, what happened in July and August of 1971?

A. Well, I am not absolutely sure of the date, but some time late in August, either late in [86] July or early in August, we received a copy of a news letter that the Union had put out to their people, to their membership.

The Clerk: Plaintiff's 10.

(Reporter's Note: Whereupon it was marked as Plaintiff's Exhibit No. 10 for identification.)

By Mr. Hambright:

Q. Plaintiff's 10 was marked, Mr. Knepper, is that the news letter?

A. Yes.

Q. Is it in the ordinary course of life between you and your company and the Union, is this, to your knowledge, circulated among the employees in the bargaining unit?

A. Yes, this is, you know, fairly common form of communication, from my observation. The Union does write to the membership under this sort of format.

Q. Would this be an expression of news items from the defendant Unions in this case to their members?

A. Yes, the method of communication.

Q. Will you please read for us the second para- [87] graph in that letter?

A. The second paragraph states: "We wish to resolve at the onset the question regarding Union membership. Our contract is clear on this point and should be read by all members. Section 2 of the contract provides in effect that persons who are members when the contract was signed or any new employees must remain or become members of the Union or pay dues to the Union, and then underlined it says: "This is a condition of employment".

Q. All right, sir, I am going to offer that in a moment, so we don't lose our place would you draw a box around that paragraph that I have asked you to read?

A. (Witness indicating.)

Q. Now the second line up from the bottom of that document, Mr. Knepper, I believe you stated they must remain or become a member, is that correct?

A. Yes, it says any new employees must remain or become members of the Union.

Q. Will you underline the words there?

A. (Witness indicating.)

Q. Now what was the second paragraph following [88] that?

A. The next paragraph says: "As far as this Union is concerned any employee in our division of Mobil will either join our Union or pay dues to the Union. We intend to exercise our right to have the employment of any unlicensed seaman terminated who does not join or pay dues to the Union. We hope this answers all questions regarding this point.

Q. Would you draw a box around that and then we will stop drawing?

A. (Witness indicating.)

Q. Now, Mr. Knepper, I take it the rest of that news letter pertains to non-relevant matters not connected with this lawsuit, is that correct?

A. Yes, sir, it deals with other matters of interest to the Union and their membership.

Q. All right, sir, now I believe you testified you weren't positive as to the exact date that you got that, but it could have been around the early part of August, 1971, is this correct?

A. Yes, sir.

Q. Do you know of your own knowledge that thereafter this lawsuit was instituted in Septem [89] ber of 1971?

A. I do, yes.

Q. All right, have you continued during the pendency of this lawsuit to use the voluntary certificate for all new hired employees that you identified a moment ago?

A. Yes, sir, we have.

Q. Mr. Knepper, do you know of your own knowledge when this suit was instituted, was it in September of 1971, the Union, the International Union was served the same date?

A. Yes, sir, I know that is true.

Q. And the Local Union was served the next day?

A. That's correct.

Q. Now who was served as a representative of the Local Union?

A. The Local Union?

Q. The Local Union.

A. Mr. John Perrio.

Q. Is Mr. John Perrio one of your employees?

A. Yes, sir, he is.

Q. Does he occupy a position with the Union?

A. Yes, sir, he is the President of the Local.

[90] Q. The President of the Local?

A. Yes, sir.

Q. Do you know where he was served, the process, of your own knowledge?

A. In his office in the Goodhue Building.

Q. Do you speak of the Goodhue Building in Beaumont, Jefferson County, Texas?

A. Yes, sir.

Q. Does the Union also have an office there?

A. Yes, sir.

Q. Is Mr. Perrio a resident of the State of Texas?

A. Yes, sir.

Q. I believe the Union also maintains an office in New York City, is this correct?

A. That's correct, yes, sir.

Q. Is this for purposes of anything to do with finances, by any chance?

A. I don't believe I understand your question.

Mr. Hambright: Strike that question, we will develop it later.

By Mr. Hambright:

Q. Now, Mr. Knepper, on these employees in this [91] bargaining unit, which you have said numbered some 279, I believe, is unemployment compensation benefits payable from any state?

A. Yes, sir, we pay a contribution to the Texas Employment Board.

Q. All right, sir, is Texas the only state that administers the unemployment compensation for all of these employees?

A. Yes, sir, it is. If an employee lives in another state he must return to Texas for employment benefits.

Q. All right, sir, is it your practice on an annual basis to make a payment to the Texas Employment Commission in regard to the premium on this unemployment insurance?

A. Yes, sir, we are required to pay one-half of one percent of the first $3,000.00 the man earns every year.

Q. Do you know how much money you paid, for instance, in 1971, to the State of Texas?

A. Yes, sir, $1,776.42.

Q. As I understand your testimony, you made no such payment to any other state and that the State of Texas exclusively administers this in [92] surance coverage?

A. Yes, that's correct.

Q. I will ask you also on your physical plant out here in Beaumont, where your office is located, do you know of your own knowledge that ad valorem property taxes on that facility is paid to the State of Texas and County of Jefferson and perhaps the school district?

A. Yes, that is true, they are.

Q. Now, Mr. Knepper, again referring to the labor contract, would you—

Mr. Hambright: Your Honor, may I approach the witness to show him this?

The Court: All right.

By Mr. Hambright:

Q. Would you identify Section 11 on page 6 of this contract?

A. Yes, sir, Section 11 is termed "validity clause".

Q. For purposes of my question may I read this paragraph, Your Honor?

The Court: It isn't necessary. If you will call it to the Court's at [93] tention, the Court can read it.

Mr. Hambright: I don't know where the other copy—excuse me, Your Honor, I didn't know you had the other copy.

Q. All right then, in regard to that, Mr. Knepper, I see that provision is made that in case something is declared invalid the parties will again meet within ten days to work out a new agreement on those matters that were invalidated.

I will ask you if this Court does declare that the agency shop clause or provision on page 2 is invalid as manager of this organization would you carry out the mandate of Paragraph 11 and meet with the Union on request in order to attempt to work out some type of other provision?

A. Yes, sir, I would.

Q. While we are on the labor contract and the Court has the document, if I may, could I refer to the preamble of the contract on page 1, which states that the agreement is between Mobil Oil Corporation Marine Transportation Department, Gulf-East Coast Operations and that that organization [94] I just described as stated to be the company for purposes of this labor contract. Is this true, Mr.

Knepper, in the sense that that organization I just described of which you are the manager, is known throughout this document as the company?

A. Yes, that's correct.

Q. Now, Mr. Knepper, in this labor contract is there a provision in here in regard to the grievance procedures?

A. Yes, sir, there is.

Q. You probably know this one from memory, on page 7, under the heading "Grievance Procedures", in Section 13, I will ask you how many steps are enumerated there?

A. There are five steps.

Q. Now the fifth step, is that the top level?

A. Yes, that is as far as the grievance goes.

Q. All right, sir, now at the fifth level is that the last chance that either the company or the Union has ordinarily to resolve the grievance before it goes into arbitration?

A. Yes, sir, that is the last step short of arbitration.

[95] And I notice that your labor contract is not, does not specify in Section 13 that any of the preliminary levels, first, second and third, or fourth, have to be gone through in any particular location. Is this true, there is no geography specified as to where this can happen?

A. Yes, sir, that's true.

Q. But the fifth and top level is stated to be at Beaumont, Texas?

A. That is correct.

Q. Is this the way it actually works?

A. Yes, sir.

Q. All right, sir, now going back over a period of time of maybe two or three years, how many of those fifth level

grievance meetings have actually been conducted in Beaumont, Texas?

A. Well, I don't have the accurate count, but quite frequently.

Q. Would you—

A. Several times a month.

Q. Would you say that you actually had a formal top-level grievance meeting under the fifth level here as often as maybe twenty times in the last [96] two or three years?

A. Yes, I would say so, yes, sir.

Q. Were you present on those occasions?

A. Yes, sir.

Q. Out of those some twenty top-level grievances, how many in fact proceeded on with—on to arbitration, the last phase, say since November of 1969, under the present labor contract?

A. Well, grievances that arose under the present contract I believe four have been arbitrated.

Q. Four have been arbitrated?

A. We have had during the term of this contract, we have had some arbitrations that were carry-overs and grievances that were under the prior contract.

Q. All right, sir, now where were the actual arbitration hearings on these cases, these four cases that arose under this contract and perhaps one or two carry-over cases from a prior labor contract?

A. Where were they held?

Q. Yes.

A. In the American Arbitration Association offices in New York City.

[97] Q. All right, sir, was this hearing at the Triple A office in New York City, was that conducted by the—or sponsored by the Triple A, as the organization that supplied the arbitrator?

A. Yes, under our agreement, the agreement calls for it to be done under Triple A auspices.

Q. Does your agreement, does your labor contract say where you must go to arbitrate?

A. No sir, I don't believe it says, it doesn't specify any locale for our hearings.

Q. All right, sir, now in reference to these twenty or more fifth level grievances in Beaumont, Texas, were you the man that heard those twenty odd fifth-level grievances?

A. Yes, sir.

Q. Did you have perhaps Mr. Shanigan or some other member of your staff to assist you?

A. Yes.

Q. Sir?

A. Sometimes several members fell in with the daily work, Captain Papich and Mr. Dayton, why I would have them help me.

Q. At the last time of these top-level hearings, as the last step in the grievance process, did [98] you have the option, if you so desired, to make a settlement or adjustment with the Union?

A. Yes, sir.

Q. Did the Union, likewise, have an option to agree with you on some solution?

A. I believe, yes, sir.

Q. If my arithmetic is correct then, the twenty odd case, only four of them, perhaps only four of them pro-

ceeded to arbitration within this last some two-year period of time, is that correct?

A. That's correct.

Q. Would it have been your function, if you had so desired, to settle all of them if you had decided to do so?

A. Yes, sir, I could have done so.

Q. Would this decision be solely and exclusively up to you, Mr. Knepper?

A. Yes, sir.

Q. Did anybody else have any say-so one way or the other on how you decided to dispose of that claim other than your own staff here or perhaps your advisors?

A. Well, I live with it, I have the decision- [99] making authority for that.

Q. All right, sir, now in addition to these grievances, are there other business matters which Mr. Perrio of the Union, the President and perhaps other Union officers have discussed with you at your office in Beaumont, Texas?

A. Yes.

Q. Sir—go ahead.

A. There are a number of subjects that come up that could be grievances that haven't formalized and carried through the steps and we discuss those and often we can dispose of them easily. Sometimes we can't and they do become formalized and come back as written here.

Q. Would you give me any estimate of how many separate, independent subject matters in the day-to-day administration of this labor contract have been so presented to at your office in Beaumont, by these Union officers since November of 1969?

A. Well, I haven't kept a running record. I would guess maybe 80 or 100.

Q. All right, sir.

A. I have no accurate count.

[100] Q. All we are asking is your best judgment.

In addition to that have you at your office in Beaumont received long-distance telephone calls from the Union officers, perhaps when they were in New York or elsewhere?

A. Yes, sir, that occurred.

Q. Over this same period of time which I am selecting for convenience, of course, from November, '69 down to date would you give me an estimate of how many separate, individual long-distance telephone calls that you or Mr. Shanigan or one of your other staff members in Beaumont, has received from Union officers either in New York or elsewhere, concerning employee relation matters under this labor contract?

A. Well, conservatively, maybe two or three a month. Probably more than that but it was two a month, about sixty, I guess. This is not from any records.

Q. Now further reference to these arbitrations, you testified that four cases had been arbitrated under this particular labor contract and maybe some carry-over cases. Have you checked to see the total number of labor arbitrations between [101] these parties, say back in 1965 or 1966, somewhere in that area down to date?

A. Well, I count nine from 1963 through the present date.

Q. Nine cases?

A. Yes, sir.

Q. All right, sir, do you know whether or not one of those cases involved an employee named Kohler (sic)?

A. Yes, sir.

Q. Go ahead.

A. There was a case actually prior to my tenure here but I am familiar with the case.

Q. All right, can you tell us what the stipulated issue was in the Kohler (sic) arbitration case?

A. This was a case that involved port overtime and it was stipulated that it would be something along the lines that if the ship loaded in Corpus Christi, and then proceeded to Houston, and loaded further and then proceeded to Beaumont for further loading and then a man joined in Beaumont, would he be entitled to the loading [102] overtime, as it is called, for the full cargo.

The idea of the case that he wasn't really—

Q. Speak louder, please.

A. I say the idea of the case being that he wasn't on board during the time the full cargo was loaded and there was a question whether he was entitled to full overtime or only a part or none.

Q. And that—would you say that the question of whether or not he got overtime or straight time would have to be decided by construction of the labor contract?

A. Definitely, yes, sir.

Q. And the stipulated issue in the Coler case was submitted to the Board of Arbitration on the examples you just gave me or substantially the example you gave me?

A. Yes, sir, as I recall it.

Q. Will you give me the approximate date of that case, please, sir?

A. My notes say that it was heard in April, 1966, so I presume it must have arisen early in 1966.

Q. All right, now I would like to ask you about [103] another arbitration involving Nelson Cash, C-a-s-h, do you recall the approximate date of the Nelson Cash arbitration?

A. That was heard in September, 1968.

Q. What was the nature of the dispute, without stating the issue again, was it a work assignment or some other—

A. Yes, it had to do with what work a pumpman could be assigned within the meaning of the agreement.

Q. All right, sir, can you tell me where Mr. Nelson Cash lives or then did live?

A. He was a resident of Vidor, Texas.

Q. Vidor, Texas?

A. Yes.

Q. Do you recall an arbitration involving a case in 1969—

A. Yes, sir, that was a matter involving promotion under the seniority provision of the agreement.

Q. Is that promotions, is that covered by this labor contract?

A. Yes, sir, it is.

Q. A party sometimes disagrees as to what those [104] provisions actually mean?

A. Yes, sir.

Q. Did this particular case involve a man who wanted to be promoted to boatswain?

A. Yes, that's correct.

Q. That was Mr. Libe?

A. Yes, sir.

Q. Where did that—where did he live?

A. He lived in Crockett, Texas.

Q. Do you know of an arbitration in 1970, involving a Mr. Bell, Mr. Phillip Bell?

A. Yes, sir.

Q. Can you tell me what the nature of the dispute was in the case of Mr. Bell?

A. This was a dispute over his status, whether there was a disciplinary status or a vacation status and it arose because Mr. Bell left his ship in Baytown, Texas, without being properly relieved and subsequently his relief didn't show up. He had proceeded home to Nederland, and we didn't have a man—

The Reporter: Keep your voice up, it is trailing off.

A. I am sorry. So we didn't have a man to [105] relieve him at the time, so we said that he was on a disciplinary status until we decided what should be done with him and his claim that he was on a vacation status.

Q. You say he left the ship in Texas City or Baytown somewhere and went to Nederland, you are talking about Nederland, Jefferson County, Texas?

A. Yes, sir.

Q. Is that his home?

A. Yes, sir.

Q. Did you hear this grievance at the fifth level before it proceeded on to arbitration?

A. No, sir, I did not, my predecessor did.

Q. Your predecessor?

A. This was a carry-over.

Q. That was one of the carry-overs?

A. Yes, sir.

Q. Do you know of your own knowledge it was heard in Beaumont, Texas?

A. Yes, sir, I believe it was from reviewing the record.

Q. All right, sir. Do you know about an arbitration involving one cook, Wayne Kortz?

A. Yes, sir.

[106] Q. What type of case was that?

A. Well, this was a case involving a discharge, whether or not the man had been discharged justifiably. We said that he had and the Union thought he had not.

Q. Do you know where Mr. Wayne Kortz makes his home?

A. Yes, sir, he is from Vidor, Texas.

Q. Now, Mr. Knepper, at the outset of this trial we discussed the labor contract's place of execution, were you a party to the collective bargaining negotiations that led up to this labor contract?

A. Yes, sir, I negotiated for the company for this contract.

Q. Where did the negotiations take place?

A. New York City.

Q. Why, if you know, did they take place in New York?

A. Partly because that has always been our practice and a more large part, I believe, for the convenience of the Union.

Q. You say the convenience of the Union?

A. Yes, sir.

[107] Q. Are you now engaged in collective bargaining negotiations for a successor contract to the present contract.

A. We are.

Q. Where are those taking place?

A. In New York City.

Q. Have you requested anything in regard to the site of those negotiations?

A. Yes, sir, I have stated that it is very unwieldy for me to run my business and be in New York City both, and I requested that we remove the negotiations or at least have a portion of them in Beaumont, where I can be close to my office.

Q. What response did you receive?

A. Well, the Union is reluctant to do this. As a matter of opinion, I think primarily because their advisors are based in New Jersey.

Q. All right, sir, back in the 1969 negotiations were you at that time a resident citizen of Beaumont?

A. Yes, I was just in the process of moving, sir.

Q. Well, during the continuing of these negotia- [108] tions did you have an occasion to travel to New York to attend these meetings?

A. Yes, sir.

Q. Did you take Mr. Shanigan from Beaumont with you on any of those trips?

A. Yes, sir, all of them.

Q. Were you the chief negotiator for the company?

A. I was.

Q. Was the strike in progress during any of this time?

A. Yes, sir.

Q. Did you then have eight tankers or nine tankers, or do you recall?

A. We had nine ships at that time.

Q. Did you ultimately sign with the Union a hand written document at the end of these negotiations?

A. Yes, sir, we did.

The Clerk: Plaintiff's Exhibit 11.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 11 for identification.)

[109] By Mr. Hambright:

Q. I show you what has been marked as Plaintiff's Exhibit 11, which consists of two handwritten sheets on legal size paper, Xeroxed. Is this a copy of the memorandum that was signed in New York, at the conclusion of those negotiations in 1969?

A. Yes, sir.

Q. Now attached to that there is a typed-up instrument, one and a fraction pages long, which purports to be a more clear portrayal of the agreement, was this typed up under your instructions to provide quick reading of those handwritten sentences?

A. Yes, sir.

Q. On Plaintiff's Exhibit 11 I notice the signature "John T. Knepper"; the date, October 30, 1969; and a couple of names for the Union, F. J. A. and D. H. S. Who are those people, please, sir?

A. Well, F. J. A. would be Frank Avery, who was then President of the Union, and D. H. S. would be Donald Sanhereza, who was financial secretary at the present.

[110] Q. I also notice it is signed by a gentleman, R. L. Clark, who is he?

A. Mr. Clark is the International representative for OCAW. I believe he is based in Providence or Boston, somewhere in the East.

Q. All right, sir, I notice the first item has to do with retaliation against people who took part in a strike or activities during strike. That seems to be item one. Did

you have an agreement that you would let them come back to work and not take any retaliation?

A. Yes, mutual agreement, I mean no retaliation on either side.

Q. And would you state whether or not there was any picketing or violence or blocking of ingress or egress during this strike?

Mr. Dixie: You would think this is a jury trial, Your Honor, I object to that as not relevant to any issue in this case as to what happened during the strike.

The Court: Do you insist on it?

Mr. Hambright: No, sir, I do not, I was only trying to develop it [111] because of this pencil and handwritten notation. I don't think it is essential.

The Court: The objection will be sustained.

By Mr. Hambright:

Q. All right, now, Mr. Knepper, I see that when you get down to Item 2 there you talk about the terms and the provisions of the collective bargaining agreement between the parties and state that that is subject to ratification by the Union. Do you recall this?

A. Yes, sir.

Q. Is this reference in Paragraph 2 intended to mean collection or work sheets and pages and part handwritten, perhaps part types a[illegible]art Xeroxed that might have been viewed for some period of many weeks of collective bargaining?

A. Yes, sir, it was.

Q. What was the understanding you had about all of that collection of pages that you state here that was going to be submitted for ratification to the Union?

A. Well, that document would be put into a [112]

smooth, final form and when ratified that both sides would sign it consummating the agreement.

Q. Do you know of your own knowledge whether or not the document was in fact placed in smooth form?

A. Yes, sir, it was.

Q. Where was this done?

A. In Beaumont, Texas.

Q. Under whose direction was this done?

A. Under mine.

Q. Do you know of your own knowledge whether the Union did proceed to ratify this new contract?

A. Yes, sir, they informed us that it was ratified.

Q. Where was this information delivered to you, Mr. Knepper, that it was ratified?

A. I really don't recall.

Q. All right, sir, did you then proceed to have the document placed in final form here in Beaumont, Texas?

A. Yes, sir.

Q. Did you then meet with the Union officials for any purposes and, if so, where? Tell the [113] Court what it was.

A. Mr. Perrio came to our office when we had it in final form, we gave him copies to approve and be sure that it had what it should, and on that day, I can recall that Mr. Shanigan and I and Perrio, signed, the other Union officers were not in Beaumont and they had to sign their copies also.

Q. I notice that on Page 50 of what is marked Plaintiff's Exhibit 1, there appears to be a signature page and it shows the execution by John T. Knepper, L. A. Papich, and W. J. Shanigan for the company. Do you recall this signature page?

A. Yes, sir.

Q. Was this the page that was signed in your office?

A. Yes, sir.

Q. Now I notice right above that it says the parties have caused these presents to be executed by their duly authorized officers this 18th day of November, 1969. That's the date that you actually signed the document in your office?

A. Yes, sir, but, as I say, all of the people [114] couldn't have signed on that day because some of them weren't in Beaumont.

Q. I understand, but you say that Mr. Perrio did come to your office and physically sign it in your presence at that time?

A. That is my recollection, yes.

Q. All right. While the document was signed on November 18th, in your office, I notice that it relates back and becomes effective November 1st, 1969, is this something that is customarily done in the dealings of labor relations to make the agreement become effective on some even day of the month that the parties so desire to do so?

A. Yes, sir, we have negotiated a number of contracts that were effective retroactively.

The Court: I believe we will have a little recess, Mr. Hambright.

Mr. Hambright: Thank you, Judge.

The Court: We will stand in recess for fifteen minutes.

(Reporter's Note: Whereupon a fifteen-minute recess was taken and court re [115] sumed.)

The Court: Do you have any further questions of this witness, Mr. Hambright?

Mr. Hambright: Yes, sir, just a few, Your Honor.

The Court: All right, you may proceed.

By Mr. Hambright:

Q. I would first like to make sure that we have Plaintiff's Exhibit 11 in evidence, which was this memorandum dated October 30, 1969, appearing in handwritten form and with the typed page and a fraction on the front of it saying what it says.

The Court: All right, the Court will consider it in evidence.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 11 was received in evidence.)

By Mr. Hambright:

Q. May I also make sure that the record reflects that Plaintiff's Exhibits 1 through 11 have all been received in evidence?

[116] The Court: Yes, sir, the Court has admitted them all.

Mr. Hambright: Thank you.

By Mr. Hambright:

Q. Mr. Knepper, the labor contract, the little, red booklet there, I don't believe I asked you where that was printed up?

A. It was printed in Beaumont, Texas.

Q. Mr. Knepper, about what year did your organization establish the headquarters in Beaumont, Texas?

A. In 1962.

Q. The function to which you testified this morning in regard to the engineering services, the housekeeping services, the budgeting, the personnel, were all of those vari-

ous services organized and brought here about ten years ago?

A. That's correct, yes, sir.

Q. All right, sir, now, Mr. Knepper, do you have a labor contract in existence with a Union called the Mobil Tankers Officers Association?

A. Yes, sir, I do.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit [117] No. 12.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 12 for identification.)

By Mr. Hambright:

Q. This has been marked Plaintiff's Exhibit 12, and would you examine that and is that a true copy of the contract?

A. Yes, sir, this is.

Mr. Hambright: May we have that admitted in evidence, Your Honor?

The Court: All right.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 12 was received in evidence.)

By Mr. Hambright:

Q. Mr. Knepper, does this contract bear an effective date of January 1st, 1970?

A. It does.

Q. Does this contract on page 3 under the maintenance of membership provision, subparagraph (c), does it contain what is commonly referred to as an agency shop provision which is similar to the one in controversy in this lawsuit?

[118] A. Yes, sir, Paragraph 3(c) of this contract is substantially similar to 2(b) of the OCAW agreement.

Q. Would you look, did you say 3(c)?

A. 3(c), yes, sir.

Q. All right, thank you. Now did you as manager of this organization learn of the invalidity of the agency shop clause in this officers contract at about the same time you found out about the one on the seamen?

A. Yes, sir, the information we had applied to both.

Q. All right, sir, did you thereafter have an occasion to discuss this with the Union representing these officers?

A. Yes, sir, I discussed this with the advisors to this Union early in May of 1970.

Q. And what did you tell them—did you tell them that you were—you had discovered the invalidity of this clause?

A. Yes, sir, I did.

Q. What response did you receive?

A. Well, substantially they agreed that if it were illegal we ought not to enforce it.

[119] Q. Has that Union representing those officers ever taken any action toward enforcing the agency shop clause in that contract?

A. No, sir, they have not.

Q. Did you have an occasion to write them a letter in regard to the invalidity of that clause?

A. Yes, sir, I wrote them a letter on I believe the 7th of May, 1970, confirming our conversation on the subject.

Q. You never heard anything back from them by way of an attack on our position or a threat to the employees or any written documents whatever?

A. No, sir, nothing of that sort.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit 12.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit 12 for identification.)

By Mr. Hambright:

Q. Now, Mr. Knepper, do you have a contract, labor contract with the radio officers Union?

A. Yes, sir.

[120] Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit No. 13.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 13 for identification.)

By Mr. Hambright:

Q. Would you look at this Plaintiffs Exhibit 13, Mr. Knepper, and tell us if that is a true copy of the Radio Officers contract?

A. Yes, sir, it is.

Q. And what is the beginning date of that labor contract?

A. This contract is dated March 1st, 1970. Actually it was signed in July of 1970, and retroactive to March 1st.

Q. Does that agency, was an agency shop clause in it or not?

A. No, sir, it does not have one.

Q. At the time that contract was negotiated you discovered the invalidity of the agency shop clause?

A. Yes, sir, I did. There was a strong demand for that clause but we didn't accede to it.

[121] Q. Did the Radio Officers perform this service aboard these vessels, the same vessels that you have described this morning?

A. Yes, sir, they do.

Q. Mr. Knepper, would you state whether or not some of your employees who are subject to the labor contract involved in this lawsuit, the seamen's contract, are physically present in the State of Texas one hundred percent of the time, some employees?

A. You are not saying as an individual here?

Q. I am not talking about John Doe, who may be here or somewhere else, but I am saying are there some individuals always in the State of Texas who are subject to this labor contract?

A. Yes, sir, definitely.

Q. If you took a calendar and laid it down on a table and it was marked off January, February and March, et cetera, would all of those months and dates be covered by employees physically present in the State of Texas, receiving money from your organization, either as wages or vacation or what-have you?

A. Yes, sir, there would always be somebody.

[122] Q. Would you name some of the typical or ordinary ports of call in the State of Texas where your tankers come into port other than Beaumont?

A. Well, Brownsville, Corpus Christi, Baytown, Texas City, Houston, and Beaumont, Port Arthur.

Q. Could it be that the same vessels might call at several of those ports on one occasion or one trip?

A. Yes, sir, that happens.

Q. Would you describe the general, ordinary pattern of the movement of your vessels, not being the one that might

temporarily be sent off to Guam or somewhere else or some foreign port, but the typical, ordinary pattern of one of your vessels?

A. Well, the typical pattern would be loading in Beaumont and discharging in a port on the Eastern seaboard, Paulsberry, New Jersey; New York City; New Haven; Providence, Rhode Island; Boston; Portsmouth.

Q. How about Florida and Alabama and some of those states?

A. We recently have had business starting in [123] Florida. Occasionally we might have a ship chartered that would go to Florida. We have ships loading in Alabama.

Q. Would there be an occasion for one of your vessels to be in a port in North Carolina or South—

A. Yes, sir, it is not frequently, but we have had ships call there.

Q. How about Mississippi?

A. I don't recall a voyage there. It is not impossible but I don't recall one.

Q. How about Virginia?

A. Yes, Virginia.

Q. Georgia?

A. Yes, we have had ships call there.

A. Delaware and Maryland?

A. Yes, sir, to both.

Q. Now in the normal course of events, bearing in mind the men work ninety days and are off thirty days on vacation, would they thereafter go and catch their ship or some other ship at some United States port ordinarily?

A. Yes.

Q. Does your office in Beaumont, Texas deter- [124] mine where he goes and which ship he will catch?

A. Yes, the determination is made in Beaumont. If he should be a man that designates Providence or New York as his shipping port he may have his orders transmitted to him through my branch office in New York, but the decision as to which ship he would go to is made in Beaumont.

Q. Suppose you told him to catch a ship in Beaumont or Corpus Christi, and his shipping port happened to be designated in Providence, Rhode Island. Would he or not receive special transportation allowance and so forth?

A. Yes, sir, he would travel from his home to the ship and he would receive transportation from the shipping port to the ship.

Q. Mr. Knepper, in the ordinary course of events would it be true that all of your 279 present employees subject to the labor contract involved in this lawsuit, would be expected to catch a ship in Beaumont or some other Texas port if they were with the company long enough to do so?

A. Yes, I think the probability is very high in the course of a man's career he would catch [125] a ship in Texas, in a Texas port.

Q. And some of them would catch it here perhaps more often than others?

A. True.

Q. Now, Mr. Knepper, once again, this agency shop clause and present labor contract with these defendants, what do you conceive to be the problem from an operating point of view with this clause in your labor contract and with the Union demanding the enforcement of that clause, as they have done in this case. What effect does that have on the company itself?

A. Well, I was advised by counsel that if we had this clause and if we enforced it we would be in violation of the

Texas Right-to-Work Law and being in violation could have some bad consequences for us, beyond bad citizenship that we could endanger our privilege of doing business in Texas, and we could also be subject to a suit by an individual employee or class suit on the basis that we infringed on their rights.

Mr. Hambright: I pass the witness.

The Court: Mr. Dixie?

[126] **CROSS EXAMINATION**

By Mr. Dixie:

Q. Mr. Knepper, is there any single man covered by this contract who spends one hundred percent of his working time in the State of Texas.

A. No, sir.

Q. You didn't intend to tell your lawyer that there was, did you?

A. No, sir, I did not.

Q. Is there any single Texas employee covered by this contract that does spend as much as fifty percent of his working time in the State of Texas?

A. No, sir, I believe not.

Q. So we have to go down to some percentage below fifty percent to find out where—how much of their time, working time your people spend in Texas, don't we?

Mr. Hambright: If it please the Court, I don't want to prolong the hearing, but the way the question was phrased it was stated in terms of your people and not an individual man.

[127] Mr. Dixie: I withdraw that question, Your Honor.

The Court: All right.

By Mr. Dixie:

Q. May I work from the blackboard?

The Court: Yes.

Q. If you will excuse my geography, I have undertaken to draw a little map of the United States, Mr. Knepper, thus far.

A. I think this was established—

Q. This is Beaumont, not very good, but we will work from this, if you follow what this is.

A. Yes.

Q. Now typically the work of your eight tankers consists in the transportation of petroleum products from the Beaumont refinery to some place on the East Coast, does it not?

A. That is true.

Q. When a vessel arrives in Beaumont how long does it take to load it?

A. Well, the time varies, I would say from eighteen to thirty hours, depending on the cargo and conditions.

Q. Do you testify that eighteen is the shortest?

[128] A. Well, I think we have done better, I was just trying to give you the middle.

Q. You testified that eighteen is the average?

A. I think the average is probably a little higher.

Q. You furnish logs to the Union, don't you, that tell exactly how many hours a vessel is in port and how many hours it is at sea, don't you?

A. We furnish logs to the Union?

Q. Yes, excerpts from the ships' logs.

A. No, I don't believe, no excerpts from the ships' logs, no.

Q. In port, let's say eighteen to thirty hours at Beaumont. Now then, when a vessel arrives from the high seas does it take on a Pilot?

A. It does usually.

Q. About how far from the actual Port of Beaumont does it take on a Pilot?

A. I would say forty-five miles.

Q. All right, and then does it have a Pilot going out forty-five miles?

A. Yes, sir.

Q. About how many hours is the ship with Pilot?

[129] A. Oh, let's say six hours probably.

Q. Each way?

A. Yes, sir.

Q. All right, with Pilot then it will be twelve hours?

A. Yes, sir.

Q. Going and coming, would it not?

A. Yes, sir.

Q. Now then, let's see, which is the predominant port on the East Coast, would you say the New Jersey-New York area gets most of your products?

A. Well, I would say the middle range is probably, I would say probably Providence.

Q. Providence is about typical?

A. Yes.

Q. About how long does it take the vessel to go from the Port of Beaumont to Providence?

A. About four and a half or five days, seaboard to seaboard.

Q. Four and a half to five days?

A. Yes.

Q. Now then, when the ship gets to Providence does she take on a Pilot?

[130] A. Yes, sir.

Q. How long does that Pilot take, do you happen to know?

A. I would say about three and a half hours.

Q. To go and come would be seven?

A. Yes.

Q. All right, with Pilot at Providence seven hours and then in port to unload would be about how much?

A. Well, again it varies, I would say eighteen to thirty hours again. Again it is a range depending on cargo and the conditions.

Q. Is it true that one of these vessels that is on a fairly steady run will make that round trip twice in about a month?

A. Approximately, yes, sir.

Q. Twice in a month?

A. Uh-huh.

Q. So then can we tell the Court that the period of time of any employee on that supposed run will be two times this once a month, that will be something we can take as normal, wouldn't it?

A. Yes, sir, I believe.

[131] Q. Okay, so the rest of the time the men are outside the State of Texas, aren't they?

A. Yes.

Q. Now let's see if they come even that often. Where is the MOBIL LUBE at this time?

A. Enroute to Guam.

Q. Enroute to Guam. Is she under charter to the United States Government?

A. She is.

Q. Is it true that she hasn't been in Texas during the last fifty days?

A. I would say roughly, I am not sure.

Q. She hasn't been here at all?

A. No.

Q. How long is she going to stay out in the future?

A. It is questionable, she is on a six-months charter.

Q. A six-months charter?

A. Yes, sir.

Q. It may be longer?

A. No, I mean she could return before the charter expires.

Q. But as far as we know it is a six-months [132] charter?

A. We don't know where she will go.

Q. Those employees who are covered by this labor contract—

A. Pardon?

Q. I say are the members of that crew employees who are covered by this labor contract?

A. Yes, sir, unlicensed members of the crew, yes, sir.

Q. Now then, where is the MOBIL POWER today?

A. She is also offshore.

Q. Where?

A. I haven't referred to the log, I am not exactly sure where she is at.

Q. Well, I was wondering if she is enroute from Boston to Puerto Rico?

A. I believe that's probably the case. It is my feeling she is headed for the Caribbean.

Q. You don't know as supervisor of that ship?

A. I haven't seen the log this morning.

Q. What does she pick up in Puerto Rico?

A. I imagine she loads products.

Q. Products?

A. Refined products.

[133] Q. What products?

A. I imagine jets and gasoline.

Q. Well, aren't you the man that sends that ship over there to pick up whatever it is going to pick up?

A. I am the man that operates the ship, yes, sir.

Q. Well, you mean to say that your supervision over that MOBIL POWER doesn't even cause you to know why the MOBIL POWER is going to Puerto Rico?

A. I have subordinates that do watch these details. I don't follow each cargo.

Q. Do you know generally what type of cargo you pick up in Puerto Rico when you make that run?

A. Yes, sir, as I told you, it is refined products.

Q. What is that?

A. Refined petroleum products.

Q. Refined petroleum products?

A. Yes, sir.

Q. Where are those refined petroleum products taken?

[134] A. Usually to the East Coast.

Q. Usually to the East Coast. Generally speaking, how long does—how often does that trip to Puerto Rico take place?

A. How frequently?

Q. Yes.

A. At no regular intervals.

Q. Well, give us your best estimate of how long that takes place.

A. I would guess that last year we may have had eight such voyages.

Q. Eight trips?

A. Yes.

Q. Eight trips to Puerto Rico?

A. Yes, sir.

Q. Now do your ships go foreign?

A. Yes, sir, we were just talking about that.

Q. Other than the ones we have been talking about?

A. Well, any of them could.

Q. Well—

A. You mean are any others on charter now, no, sir.

Q. What has been the practice in say the year [135] 1971? How many ships made trips to foreign ports?

A. I believe three.

Q. What?

A. I believe three.

Q. Give us the name of the first one.

A. I am sorry, without reference to my log I couldn't tell you.

Q. Where did those three ships go?

A. To Puerto Rico. We also had some military charters.

Q. Out to the Pacific?

A. I believe these were to the West Coast.

Q. To the West Coast?

A. Yes, sir.

Q. Would that be to the California ports?

A. Yes, sir.

Q. All right, and then from the West Coast where?

A. Back to the Gulf.

Q. Back to the Gulf?

A. Uh-huh. Excuse me, we also had a voyage to Hawaii.

Q. A voyage to Hawaii?

[136] A. Yes, sir.

Q. Now can't you give us your best estimate as to how much time was spent by those three vessels in traveling foreign, that is, from some port in the United States to some port in a foreign country?

A. I haven't tabulated it.

Q. Well, can you give us your best estimate?

A. Just off the top of my head I would say maybe fifteen percent of voyage time was in foreign voyages.

Q. Does the ECLIPSE, the SS ECLIPSE sometimes go to Brownsville to pick up products for Providence, Rhode Island?

A. Yes, sir.

Q. This is a petroleum product, a component of asphalt?

A. Yes, that's correct.

Q. What is the source of that raw product, is it Mexico?

A. Yes, it is Mexico.

Q. How often does the ECLIPSE go to Brownsville to pick up this Mexican raw product to deliver up to Providence?

[137] A. Well, frequently, I would say at least once a month probably there is a cargo like that.

Q. At least once a month. What is the duration of the trip that the ECLIPSE makes from Brownsville to Providence?

A. Well, that is a longer run, I would say that that probably is around an eighteen-day round trip at least.

Q. Okay, now so far we have a situation where your typical run has a man in Beaumont, Texas twice a month from eighteen to thirty hours each time. but if we are going to go to the average that employee works we have to deduct the LUBE which is on charter, we have to deduct the MOBIL POWER and we have to alter our figures for the ECLIPSE, don't we?

A. Yes, you want to make that sort of calculation you do.

Q. Now let's see, how do you pay these employees, do you pay them in cash at the end of the trip?

A. Generally they are paid in cash for the period of time they are on the ship. Paid in cash by the Master.

Q. Do you pay them in cash because they are [138] subjectt o the Maritime Law and that is what is required for seamen or the seamen demand it?

A. Yes, sir, if the seaman demands cash he must have cash.

Q. Do you usually pay those men off in a northern port?

A. Generally, yes, sir.

Q. That would be up in New York or Providence somewhere?

A. Yes, sir.

Q. And do you usually pay them every other trip?

A. That is the general practice, yes, sir.

Q. In cash?

A. Yes, with one exception to that, if the employee would like to have a check sent to his bank or dependents, he can request that and the check will be sent to the extent that he receives the money by check, he doesn't receive it in cash.

Q. So then on your plaintiff's Exhibit 3, which you identified under cash supplied, $1,994,000.00 let's call that two million dollars, just for round figures, that's close to two million dollars. That two million dollars [139] that you pay in cash in a northern port, you list it here as money paid in Texas, right?

A. No, sir.

Mr. Hambright: If it please the Court, that is not listed as money paid in Texas, it was developed on chief examination that the money was picked up from the First Security Bank in Beaumont, in armored cars and taken and given to the Master aboard ship and so identified on direct testimony.

The Court: All right, you may make your objection, but it isn't necessary for you to explain your objection. You object to the question that he asked the witness?

Mr. Hambright: Yes, sir, because the question assumes what I interpret to be erroneous.

The Court: The objection is overruled. This is cross examination.

By Mr. Dixie:

Q. In any event—I will rephrase it will be [140] better for you.

Notwithstanding this Plaintiff's Exhibit 3, this particular two million dollars in wages that we are talking about that is paid to the men in cash in Northern ports while they are working, correct?

A. Substantially true, yes, sir.

Q. Also Plaintiff's Exhibit 3, as you told us, includes the salaries of licensed personnel and the Masters, is that correct?

A. That's correct, yes, sir.

Q. We don't know just what part of this exhibit really concerns wages paid to the employees involved in this lawsuit, do we?

A. That's correct.

Q. Now I want to ask you about Plaintiff's Exhibit No. 2. There are designated shipping ports that you have here. When a man goes to work for you, you require him to designate Beaumont, New York, or Providence, a shipping port, is that right?

A. Yes, sir, that is true.

Q. And that means he can designate any port he wants to, regardless of where he lives?

[141] A. That's correct.

Q. And the purpose of that designation is to give him his travel allowance, isn't it?

A. That's correct.

Q. Now do you have some of your employees that live in the State of California?

A. Yes, sir, we do.

Q. All right, now let us suppose that an employee who resides in California but works for Mobil has designated Beaumont as his designated shipping port and let us suppose he got off of the vessel at Tallahassee, Florida and he is going home, he goes home to California?

A. Uh-huh.

Q. Do you follow me so far?

A. Yes, sir.

Q. Then under this designated shipping port Mobil Oil will pay him transportation from Tallahassee, Florida to Beaumont, but not the rest of the way to California?

A. That is correct, yes, sir.

Q. Now if the man thinks he man make more money by designating Portsmouth or New York, he can do that, can't he?

[142] A. Yes, sir.

Q. Even though he is going to California?

A. Yes, sir, that is true.

Q. So that shipping port doesn't tell us much about the man's center of activities, does it? That just tells us where he got the—

The Court: Just a minute.

Mr. Hambright: He isn't giving the witness time to answer. The witness embarks on an answer and he starts on a new question.

The Court: I don't think counsel intends to interrupt him. We will sustain the objection, however, and let you start over.

By Mr. Dixie:

Q. Now as far as the residence of these men is concerned, what you have given us is the designation of residence that they make on your records, have you not?

A. Yes, sir.

Q. You know some of the boys like to designate Texas as a residence so they don't have to pay New York income tax, have you ever heard that?

[143] A. It is a possibility, yes, sir.

Q. Who is your immediate superior?

A. Arthur E. Fisher.

Q. What is Mr. Fisher's title?

A. He is manager, U. S. operations.

Q. Of what department?

A. Marine Transportation Department?

Q. You are answerable to him for your conduct of these eight tankers?

A. Yes, sir, I am.

Q. This suit has been filed under the name of Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, you have already told us that you are the head man in the Gulf-East Coast Operations?

A. That's correct.

Q. And you are subject to Mr. Arthur E. Fisher, he is the head of the Marine Transportation Department, is that correct?

A. No, sir.

Q. What is he?

A. He is head of U. S. Operations.

Q. All right, who is Mr. Fisher's superior?

A. Henry J. Luck.

[144] Q. L-u-c-k?

A. Yes, sir.

Q. What is his position?

A. He is General Manager of Marine Transportation Department.

Q. Is Mr. Arthur Fisher a part of the Marine Transportation Department?

A. Yes, sir.

Q. All right, so I gather that Gulf-East Coast Operations is subject to the Marine Transportation Department, is that correct?

A. Yes, sir, part of it.

Q. And then in turn the Marine Transportation Department is subject to the corporate officers?

A. Yes, sir.

Q. Now in this suit you filed your complaint and you allege that Mobil Oil Corporation is a New York corporation. Are you familiar with that?

A. Am I familiar that it is a New York corporation?

Q. Yes.

A. Yes, sir, I know it to be a New York corporation.

[145] Q. And then are the principal corporate officers headquarters in New York State?

A. Yes, sir, they are.

Q. And then are the principal officers of the Marine Transportation Department headquartered in New York State?

A. The Marine Transportation Department?

Q. Yes.

A. Yes, sir.

Q. They are. All right, now you have told us—let's back up a minute. I believe you said that when you executed this contract, first on October 30, 1969, the execution was preceded by a strike, is that correct?

A. I don't recall saying that, but there was a strike.

Q. It was a six-month strike, was it not?

A. No, sir.

Q. How long was the strike?

A. I believe seventy days.

Q. Seventy days?

A. Yes, sir.

Q. And then preceding that seventy days did you negotiate for sixty days as required by the [146] Taft-Hartley Act?

A. Yes, sir, I am sure we did.

Q. And did you negotiate from time to time during the strike?

A. Yes, sir.

Q. How many negotiating sessions did you have?

A. I haven't the records, I would think thirty or forty, probably, you mean individual days?

Q. Thirty or forty days?

A. Yes, sir.

Q. Was each and every one of those negotiating sessions conducted in New York City?

A. Yes, sir.

Q. Was any negotiations conducted in Texas?

A. No, sir.

Q. Why, if the head operation is down here in Texas, did you spend all of that time in New York, Mr. Knepper?

A. That has been our pattern of relationship with this Union, primarily for the Union's convenience.

Q. Going back to 1942, hasn't it?

A. Yes, sir.

Q. All right, and then, of course, you have [147] access to your corporate officers up there to advise with them when decisions are necessary, don't you?

A. We do have access to them, yes.

Q. So that is the reason you negotiate in New York.

A. No, sir, it isn't.

Q. What is the reason?

A. Primarily for the convenience of the Union.

Q. Merely for the convenience of the Union you negotiate in New York?

A. Yes, sir.

Q. Well, is the Union centered in New York?

A. Yes, sir.

Q. Why do you say that?

A. Because they tell me that their main office is at Beekman Street in New York.

Q. Their main office in New York?

A. Also the designation of their Local indicates that they are an East Coast Local and not a Gulf Local.

Q. I wonder if you are familiar with the fact that this Union is certified to the Mobil Oil Corporation?

[148] A. Yes, sir, I am familiar with that.

Q. Not to the Gulf-East Coast Operations but to the Mobil Oil Corporation. You know that, don't you?

A. I know the wording of that, yes, sir.

Q. And you know that this Union is certified by the New York office of the National Labor Relations Board, don't you?

A. Yes, sir, I know that.

Q. That's where the original elections were conducted, were they not?

A. The original elections?

Q. Yes.

A. I doubt if they were conducted in New York.

Q. Well, I mean that the office that supervised the election.

A. I believe that's probably true.

Mr. Dixie: I offer in evidence Defendant's Exhibit 1, which is the official certification.

The Clerk: Defendant's Exhibit No. 1.

Mr. Dixie: I have exhibited that to counsel and we will offer that, [149] Your Honor.

The Court: All right, it will be accepted.

(Reporter's Note: Whereupon it was marked Defendant's Exhibit No. 1 for identification and received in evidence.)

By Mr. Dixie:

Q. We have already put in evidence the memorandum of understanding which you signed on October 30, 1969, at New York City.

A. Uh-huh.

Q. You remember that document?

A. Yes, sir.

Q. And you gentlemen up there made the contract effective two days later, on November 1st, did you not?

A. Yes, sir, uh-huh.

Q. Correct?

A. Yes.

Q. That is provided the Union ratified it in the meantime?

A. Yes, sir.

Q. And you started paying the wages on November [150] the 1st, 1969, did you not?

A. That is correct, yes, sir.

Q. When you came to sign this contract of November the 8th, 1969, you were already paying the increased wages, were you not?

A. That is true, yes, sir.

Q. Isn't that then a situation that the signing that you made in Beaumont was a formality to put everything in tidy order and your contract was effective upon ratification following October 30th, isn't that the situation?

Mr. Hambright: We object, if it please the Court. I think he stated two questions in one. He said do you do it, do you put it in the form of tidiness——

The Court: I believe this witness might be able to.

Mr. Dixie: Well, let's get it this way.

Q. Since your contract, since the contract was signed in New York, ratified and put in effect on November 1, 1969, does that mean that you considered you had a binding contract with the Union [151] as of that date and time?

A. Yes, sir, I thought we had a binding meeting of the minds.

Q. And the formal signing that took place on November the 18th, that was just to put everything in ship-shape order as a signed document, wasn't it?

A. More than just ship-shape order, I didn't feel comfortable until I had the agreement, meeting of the minds reduced to writing until I had that document sgined.

Q. Oh, Mr. Knepper, I have a copy of this other document. You recognize this as your memorandum of understanding executed on October the 30th?

A. Yes, sir, this is basically the substance of the agreement, yes, sir.

Q. I believe you told us when Mr. Perrio came in to sign it in November, his business was to proof-read the contract, is that right?

A. Yes, sir.

Q. That was to make sure that the final document said exactly what you signed in New York, correct?

A. Yes, sir.

Q. Now I will take the liberty to call the Court's attention to the fact that there is a decision [152] that I am fa-

miliar with because it cost my clients $20,000.00 to think otherwise. CCI Corporation vs. Steel Workers Union, by the Tenth Circuit that says that the contract is effective in the labor situation upon ratification by the Union and the Union was not free to engage in striking after that, which they did to their sorrow.

[153] I will give the Court that citation before we terminate the trial.

Mr. Hambright: May it please the Court, on this point of ratification—

The Court: I think this evidence is offered, I presume for the purpose of showing that the contract is duly consummated somewhere other than Beaumont, is that the purpose?

Mr. Dixie: Yes, sir.

The Court: All right.

By Mr. Dixie:

Q. Mr. Knepper, you had a habit of having periodic meetings with the Union to discuss your mutual business, did you not?

A. Yes, sir, for a period of time we did that, yes.

Q. Were those quarterly meetings?

A. Yes, sir, roughly on the quarterly schedule.

Q. All right, four times a year?

A. Yes, sir.

Q. How many years have those meetings been going on?

A. I don't really know, I think my predecessor [154] conducted such meetings and we conducted them during the first two years of this current contract and then we discontinued them.

Q. All right, where did those meetings take place?

A. New York.

Q. All of them?

A. Yes, sir.

Q. All of them in New York?

A. Yes. Again, for convenience of the Union.

Q. How many arbitration cases have you had?

A. I believe there have been six while I have been managing it.

Q. While you have been manager?

A. Yes.

Q. Have they all been conducted in New York?

A. Yes, sir.

Q. Have you checked arbitration cases before the six you had?

A. Yes, sir, I have a listing up to nine from 1966. Before that I don't know.

Q. Were they all conducted in New York City?

A. Yes, sir.

Q. Why?

[155] A. Because our agreement calls for them to be done under the auspices of the Triple A, and we had a pattern in the past of using Triple A, and that's why we continued.

Q. You are surely not telling the Court that the Triple A causes you to arbitrate in New York?

A. No, I am just saying that is the pattern we established and that's why we go to the Triple A office.

Q. I want to show you a letter dated July 19, 1971, to

the American Arbitration Association and ask you whether or not you sent such a letter?

A. Yes, sir, I did.

Q. Since it is only three lines long, would you please read it to the Court?

A. Yes, sir. This says: "Gentlemen, in response to your letter of July 16, 1971, we designate New York City as our choice of locale for the arbitration hearings and appointment of Mr. W. M. Gage as company arbitrator."

Q. Have you sent that type of letter each time that you had an arbitration to hear?

A. I don't believe every time, no, sir.

Q. I notice you say that it is the company's [156] choice of locale to arbitrate in New York. Is there some reason why you say that in your letter?

A. I suppose it is convenient for us to use.

Q. Is it true?

A. Yes, we chose, we weren't dragged there.

Q. Speaking of the convenience of the Union, when you had your quarterly meetings in New York did you pay transportation of Union officers to go up there?

A. Yes, sir, we did.

Q. Did you pay them lost time while they were in New York?

A. Lost time?

Q. Yes, from their work.

A. We paid their wages, yes, sir.

Q. You paid their wages?

A. Yes, sir.

Q. So the company transported the Union Committee to New York and paid their wages?

A. Yes, sir.

Q. And you say you do that for the convenience of the Union?

A. Yes, sir.

Q. Now let's talk about your grievance procedure. The contract contains a grievance and arbitration [157] procedure, does it not?

A. Yes, sir.

Q. Does it provide for a first step?

A. Yes, sir.

Q. Does it provide that the complaint of the man will be presented to his immediate superior?

A. It does, yes, sir.

Q. That would be either the Boatswain or the First Assistant Engineer or the Steward, is that correct?

A. That's correct, yes, sir.

Q. This is all done aboard ship?

A. All people are aboard ship.

Q. On high seas?

A. Or in port.

Q. Does it have a second step?

A. Yes, sir.

Q. And then what does the second step consist of?

A. Well, then the second step is, failing at the first step, the dispute is then referred to the department head.

Q. Is that aboard ship?

A. Yes, sir.

[158] Q. So the second step would take it up one step either to the Chief Mate or Chief Engineer, correct?

A. That's correct.

Q. Where does the third step go?

A. The third step goes to the Master of the vessel.

Q. All right, to the Master of the vessel?

A. Yes, sir.

Q. And that would be on the high seas if that's where they happen to be?

A. Yes, sir.

Q. Where does the fourth step go?

A. The fourth step is the Marine Superintendent or the Superintendent of Marine Maintenance and Engineering.

Q. The Marine Superintendent where?

A. In Beaumont, Texas.

Q. All right, now does that mean you only have one Marine Superintendent?

A. That's correct, yes, sir.

Q. How is the matter presented to him?

A. Usually verbally.

Q. Verbally?

[159] A. Yes.

Q. By whom?

A. Usually by some Union officer that is ashore.

Q. Then the fifth step consists of writing a letter, is that correct?

A. Well, in the practice it consists of presenting me with a form, a grievance form with details of what has happened on all of the procedures.

Q. The fifth step consists of them giving you a form properly filled out, showing what the grievance is about?

A. Yes, presenting the grievance to me with a written form, yes, sir.

Q. Now the contract doesn't provide for any meeting in Beaumont after the formal grievance is presented, does it?

A. No, that is the fifth step.

Q. Then the next thing that happens is you go to New York to arbitrate?

A. Or we settle the grievance.

Q. Now you told us, you told the Court that you had as many as twenty hearings conducted on [160] grievances in Beaumont, Texas, and did I understand you right about that?

A. I think what I said is that we had, I estimated that we may have had twenty written grievances at the fifth level in Beaumont.

Q. Well—

A. Some of which were presented personally by the Union officer that is located in Beaumont, and some come by mail to us from the New York office.

Q. Some in person and some by mail. When you said twenty hearings you were including the receipt of mail, is that correct?

A. I don't believe I said twenty meetings, hearings.

Q. Didn't you say twenty?

A. I think I said probably twenty grievances at the fifth level.

Q. I am glad to be straightened out, but I understood you to say that you had twenty hearings and only four of them went to arbitration, from which I assumed that you got sixteen settlements in Beaumont after a hearing and only four of them had to be tried. Is that not correct?

[161] A. Yes, sir, that is basically right.

Q. Well, if you had twenty hearings you ought to be able to give us the number of the grievances where you had such hearings, can you?

A. No, sir, I can't without going to my files and digging them out.

Q. Did you keep minutes of those hearings?

A. We kept memos and usually give a written reply to the grievance.

Q. Do you keep minutes of hearings of the kind you are talking about?

A. Well, I don't know what you are talking about or what you mean by hearings. We don't have a formal hearing procedure.

Q. Well, isn't it a fact, Mr. Knepper, that there are no formal hearings conducted in Beaumont under this grievance procedure at all, isn't that a fact, no formal hearings?

A. Well, I am at a loss as to what you mean by formal hearings. I meet with Mr. Perrio or whoever is in Beaumont, we sit down in my office and we discuss grievances. If this is an informal hearing perhaps.

Q. Are you testifying that you had twenty meet-[162] ings with Mr. Perrio to settle formal grievances?

A. Yes, sir, I would say approximately that, yes.

Q. What is that?

A. I say approximately that number, I can't say specifically.

Q. Do you have minutes of those you can show us?

A. We would have some, we wouldn't have complete minutes, we would have notes and memoranda data and so forth.

Q. I would like to ask you to produce those between now and tomorrow, if we are still going tomorrow, because I would like to see what they are, if you please, Mr. Knepper.

A. Yes.

Q. Now, if I understand your testimony right, about your arguments with the Union, you wrote them a letter in the spring of 1970, in which you told them that the clause was illegal and you told them how you were going to do things after that and you did do them that way after that, is that correct?

A. That is true, yes, sir.

Q. The Union never filed a grievance about that [163] with you, did they?

A. No, sir.

Q. Or bring any suit against you?

A. No, sir.

Q. Or make any written reply?

A. No, sir.

Q. Is that right?

A. No, sir.

Q. Then about a year and a half later the Union sent a letter to its membership, correct?

A. That is correct, yes, sir.

Q. How did you get the letter?

A. I don't recall. Those letters often turn up on my desk.

Q. Well, is it customary for the company to snoop around to find out what the Union is writing to its members about?

A. If we see a Union paper we always pick it up and read it. It is not a confidential document.

Q. So you got the letter by going and finding it and picking it up?

A. Yes, sir.

Q. The Union wasn't talking to you at all, the [164] Union was talking to its members, wasn't it?

A. Yes, sir.

Q. Its members had already joined the Union, hadn't it?

A. I don't know if they were members.

Q. If they were members they already belonged to the Union, is that right?

A. Well—

Mr. Hambright: We object to that question, the witness has testified he doesn't know who is a member and who isn't a member in all cases.

The Court: I think it is pretty argumentative, Mr. Dixie.

By Mr. Dixie:

Q. All right. Anyway, you picked up the Union letter and that's what brought on this lawsuit?

A. Yes, sir.

Q. In your discussions with the Union did you take the position that this clause was illegal in its entirety applied to any covered employee?

A. Yes, sir.

Q. In other words, you told the Union that you [165] were advised by counsel that this agency shop clause is illegal as to any employee, even if that employee signed on in New York, and even if that employee never came to Texas, it was still illegal as to all of them.

Mr. Hambright: We object, Your Honor, on the grounds that proof shows that there is no employee in that hypothetical status, that they all come to Texas, and some of them more than others.

The Court: I think the question is probably improper. The objection will be sustained.

By Mr. Dixie:

Q. I just want to establish the point that it was your position that the thing is illegal as applied to everybody of new employees, is that correct?

A. Yes, sir.

Q. Your position was it was illegal as applied to a resident of New York State?

A. Yes, sir.

Q. Is that correct?

[166] A. Yes, sir.

Q. All right, you never did get down to any discussion with the Union as to whether or not it was illegal as to some employees and illegal as to other employees, did you?

A. No, sir.

Q. That wasn't a part of your argument at all, right?

A. Yes.

The Court: This is duplicity, he has already answered the question once. I think we can shorten it a little bit, Mr. Dixie.

Mr. Dixie: All right, Your Honor. I am almost through, Your Honor.

The Court: Just as a matter of inquiry, however, is the issue for the Court to decide whether or not the contract may be invalid as to some employees, all employees or any employees, or if it was, if it is invalid to any employees would it be—would it be an enforceable provision of the contract? I am asking you, Mr. [167] Dixie?

Mr. Dixie: Well, Your Honor.

The Court: In other words, you are asking him the question if it is applied to residents of New York, but if it applies to anyone, which would be a resident of Texas, of course, but if it is invalid as to anyone is it an enforceable provision?

Mr. Dixie: Well, I think it is to the extent that it is valid and we have some Labor Board decisions in the summary judgment papers where the Labor Board, twenty-five years ago in a trucking situation said that it is legal as to these people but not legal as to these people. But the main point I want to say to the Court is that these parties have had no case or controversy touching the question of whether or not it is legal as to any specific employee and thereby to get the Court in a position where you are to render an advisory opinion about [168] some imaginary person that hasn't come up yet and when we get in to that we run right square into the teeth of what the courts are not supposed to do.

The Court: I am not too sure about that. I mean I may—I am not too sure as to what the Court is supposed to do. That I am pretty sure about, but it seems to me that the issue rather than whether this is a Texas contract or whether it is a New York contract or some other contract from some other state, it is applicable to residents of Texas and do we not have to apply the Texas law. That is the point that sticks out in my mind. Now I don't think the Court has to decide or I hope the Court does not have to

decide whether this is a Texas contract or whether it is a New York contract or whether it is a contract of some other state. But, wherever the contract is consummated [169] or finalized, if it is applicable to residents in Texas, is it not the responsibility of the Court to interpret the Texas law?

Mr. Dixie: Well, the Court will have to cross several bridges to come to that result but—

The Court: I just wanted your reaction to that and we will cross those bridges as we get to them.

Mr. Dixie: But the point about that is this controversy has never isolated the question that you are now isolating. This complaint and these distinguished lawyers say that it is invalid in its entirety as applied to anybody. That's all that they have ever said.

The Court: That's because it is a Texas contract?

Mr. Dixie: I don't know why they think it.

The Court: Well, we will have to find out. We will have to find out, [171] but I don't know. We will proceed on and maybe it will unravel as we get further into the trial.

Mr. Dixie: Very well. I am almost through with this witness, if the Court will indulge me just a minute.

The Court: All right.

By Mr. Dixie:

Q. Do these tankers each have a home port?

A. Yes, sir.

Q. Are they registered under the requirements of the Maritime Statute of the United States?

A. Yes, sir, they are.

Q. In what ports are these vessels registered?

A. Some in Wilmington, Delaware, and some in New York City.

Q. Are any of them registered in the State of Texas?

A. Not to my knowledge, no.

Q. Does Mobil Oil Corporation operate vessels other than the ones that are under your jurisdiction?

A. Yes, sir.

Q. And where are they, where do they operate?

[172] A. Well, Mobil has a West Coast fleet, they have inland fleets of tugs and barges and small coastal tankers, they have an extensive foreign flag fleet.

Q. All right, now are all of those under the jurisdiction of the so-called Marine Transportation Department?

A. Yes, sir.

Mr. Dixie: I pass the witness.

The Court: Anything further, Mr. Hambright?

Mr. Hambright: Yes, sir, I have some more questions.

REDIRECT EXAMINATION

By Mr. Hambright:

Q. Mr. Knepper, let's go back to New York on the memorandum signing day, when you wrote out those two sheets of handwriting, I believe this is October 30, 1969, is that correct?

A. Yes, sir.

Q. I believe you have identified the second paragraph in there as stating that the labor agreement would become effective upon ratification [173] by the Union membership, is this correct?

A. Yes, sir.

Q. Now at the time you signed that handwritten memorandum there had been no such ratification, had there?

A. No, not at that time, no, sir.

Q. Now you told Mr. Dixie that you had a meeting of the minds as to the contents of these work sheets, is that correct?

A. Yes, sir.

Q. Do you know as a man in your position, as manager of this corporation, of this organization, that very often labor contracts are agreed upon by the negotiators and then not ratified by the membership?

A. Yes, sir, that happens.

Q. And you have heard of that happening?

A. Yes, sir.

Q. And do you know as a fact that when that happens it goes back to the bargaining table?

A. That's correct, yes.

Q. And the clauses and provisions might receive considerable changes and adjustments, is that correct?

[174] A. I would think that would happen, yes, sir.

Q. This labor contract we are talking about has a lot more in there beyond just the agency shop clause, does it not?

A. Yes, sir.

Q. Do you count or do you know that it might have going over one hundred paragraphs and provisions?

A. Yes, sir.

Q. And had there been a non-ratification can you state as a fact that it would have been necessary to take up the pieces and negotiate some more?

A. Yes, sir, that is true.

The Court: Where would you have to go to do the negotiating? I think that is important.

Mr. Hambright: Could you have negotiated any last-minute changes in your office in Beaumont, as well as in New York?

A. Yes, sir.

Q. Did you testify that you are now asking the Union to meet you here in Beaumont?

A. Yes, sir.

[175] Mr. Hambright: Would the Court give us just one or two minutes, maybe we will be able to—

The Court: Yes, I probably will give you until 9:30 in the morning.

Is it the plaintiff's contention that this is a Texas contract? Is their cause of action predicated upon this being a Texas contract?

Mr. Dixie: Would the Court give me thirty seconds on that?

The Court: I think you can think about that in the morning and I would like to hear a little argument from both of you in the morning about this. It looks to me like this is the real meat in the lawsuit, the real basis for the lawsuit. If you contend that this is a Texas Contract, then I think your facts are a little light. If it isn't necessary, then we might be able to proceed further, but you can tell me, give me the answer to that question in the morning.

]176[Mr. Hambright: Well, excuse me, Your Honor.

The Court: That's all I have to say.

Mr. Hambright: I was just going to get the copy of the Taft-Hartley Section 14b, that I referred to this morning, it is our contention that if this contract was executed in Texas, then clearly it is in violation of the agency shop clause category.

The Court: I think that would be probably correct.

Mr. Hambright: Which would be one hundred percent as to all these employees. On the other hand, if it is not executed in Texas, but is applied in Texas, then under the Taft-Hartley Act, Section 14b, likewise, it is void as to all employees if it receives application in the State of Texas, so that the need only be executed or applied.

The Court: The exclusive applica- [177] tion in Texas?

Mr. Hambright: No, sir, I do not think it has to be exclusive, but we come back to the time sequence. It is always receiving application in Texas, every day of the calendar, according to this witness. In view of the close ties to Texas, and actually the company, the organization appearing as the contracting party, the employer in that labor contract, is headquartered here in Beaumont, Texas. I don't think there is any doubt of that and there may be ships coming in and going but in a way it would be similar to an Amarillo company that had some shoe salesmen that went to Oklahoma a great bit of their time, still it is a Texas employer and the company is here all the time, the money is being handled here, the payroll records are here, the unemployment insurance is here, and there is someone always in Texas subscribing to the contract, such as [178] these various vacationing people or people on ships or on standby or this sort of thing. So we are saying that if our proof does not satisfy the Court that the contract was executed in Texas, in view of this double ceremony of whatever they to call it, notice after ratification, still it was and is applied in Texas every day and receiving application here right along.

The Court: Application might save you. In all sincerity, I don't believe the Court could find that the contract is consummated in Texas. I think the contract was reached in New York. It may be finalized here, but again, according to the decision Mr. Dixie quoted there, that is more of a procedural aspect rather than substance.

Now if the application of it will bring into force the Texas law, then you may have some basis for your [179] lawsuit, but I think I would have to find that the contract was a New York contract. Of course, as a matter of information, I don't—is the situation such that those who negotiated this contract for the plaintiff did not know that it was in violation of the Right-to-Work Law in Texas?

Mr. Hambright: Yes, sir, that is correct.

The Court: They did not know?

Mr. Hambright: Yes, sir, the notification sent by Mr. Knepper to the other Union with the other contracts, I have seen that letter and it states that the company was acting in ignorance of the Texas law.

The Court: And I suppose it doesn't violate the New York law?

Mr. Hambright: Yes, sir, that is correct, and there, of course, are other states involved, some with Right-to-Work laws, most of the southern states with them and most of the northern [180] states without them.

The Court: Then we would get down to the question of whether or not the application in Texas would bring into effect the Texas law.

Mr. Hambright: Yes, sir, that's what we contend to be the constant, everyday application in the State of Texas, it is a Texas employer, the same as Mobil Refinery out here. We can show the Court, the Court will take judicial notice, I think, that after fifty years of the operation of this refinery that it too is owned by Mobil Oil Corporation in New York City, but it nevertheless has labor contracts with OCAW Locals that are signed much like Mr. Knepper's contract. It will say "Beaumont Refinery" above the Mobil Oil Corporation.

The Court: With headquarters in New York?

Mr. Hambright: The corporate headquarters are in New York, Your [181] Honor, but the operating divisions run the refinery and I think the analogy is very apt is very apt because no one would question that the Beaumont Refinery is not a Texas employer for the purposes of these provisions, having been before Your Honor as plaintiff and defendant in many lawsuits down here in Beaumont. The Mobil Refinery out there. So, we think—

The Court: It wasn't an employer to the extent of negotiating a contract in Beaumont, they had to go to New York to negotiate the contract?

Mr. Hambright: In this particular case prior to 1962 the operations that are now in Texas were conducted elsewhere and they developed this pattern and they—they have, labor relations change a little slower than the day-to-day logistic change, I am afraid, and so they have authority to negotiate but they have moved their business here and it was done. And I want the Court [182] to understand ten years ago, long before anyone knew that this controversy would arise and the East Coast operations were brought here in '62, and this all began as a Texas employer at that time. And this was done without any intention of motive one way or the other in respect to the Texas Right-to-Work Law.

The Court: But it is obvious that the parties at the time they negotiated this contract, that they didn't intend to be affected by Texas law.

Mr. Dixie: Your Honor, we have the section 11, I believe it is in there, which acknowledges that the contract may be invalid and it says in effect that if it should be held to be in part invalid the other one hundred percent section would go ahead.

The Court: I understand that, but this would be a matter that would be so obvious to a Texas lawyer, that [183] would know anything about labor relations, labor law.

Mr. Hambright: Judge, I have to tell the Court to my knowledge no Texas lawyers participated in that.

The Court: But if they intended for such law to apply, they would have to fix a law to apply—

Mr. Hambright: I think they were subject to the lawyer and this law department, it determined that upon being presented with this finished product but I think—

The Court: Well, we will get down to this proposition. The Court in all fairness, I can't conclude that this is anything other than a New York contract, not a Texas contract. May even been consummated in New York, but it is applicable in Texas, and because of its applicability it would bring the Texas law into effect and cause the Texas law to apply then. Then I am willing to go forward with the trial [184] and let you pursue your remedy from that standpoint. I will be happy to hear from counsel early tomorrow morning in regards to the matter. In other words, Mr. Dixie, if you disagree with counsel to the effect that you do not think that Texas law would apply, even though the details of the operation and so forth come through the Beaumont office, then you can be prepared to present argument in behalf of your position in the morning.

We will stand in recess until 9:30.

The Marshal: Everyone rise, please.

Reporter's Note: Whereupon the Noon recess was taken and Court resumed on 6-27-72.)

[185] MORNING SESSION

The Court: Please be seated. We are ready to proceed. I think the proper procedure under these circumstances will be for both parties to offer such evidence as you wish to offer, after that why we will permit you to argue the case. So you may proceed, Mr. Hambright.

Mr. Hambright: I would like to advise that Mr. Tucker's absence is occasioned by the fact that he is in Dallas, attending the funeral of his wife's brother-in-law, who was on that plane that crashed in New Mexico with those geologists the other day.

The Court: I heard about that last night and I am sorry to hear it.

Mr. Hambright: If it please the Court, we are prepared to go forward with Mr. Knepper without arguing the case on the merits, I did have a statement of position that I understood may [186] be helpful to the Court and the other parties, and if the Court would prefer, we will defer that but—

The Court: It doesn't matter, it may be just as well for you to go ahead and state your position.

Mr. Hambright: Thank you, Your Honor. It necessarily requires a reference to an authority or two that Mr. Dixie mentioned about two that we have, but basically it is not a full discussion of the authorities by any means. I will state our position. Yesterday the Court inquired as to our opinion about this case. Given the proposition that the Court was not persuaded that this contract was executed in Texas, and from that point onward I would like to briefly give our position on those circumstances. It is the position of the plaintiff that regardless of the place of execution of this labor contract, contract provisions that are violative of the [187] Texas Public policy will not be enforced in the State of Texas. Now this is our basic position in the case. We did allege and plead the execution in Texas because of the double execution the Court is now familiar with. This was put in there as showing not only the place of execution but the place where the contract was applied and without re-opening that question and bearing in mind the Court's announcement of his feelings on that I would like to say that the fact that they did meet in Beaumont and approve, read it, if you will, and straighten out the things and it is printed in Beaumont independently of the place of execution, this is evidence, we think, that the contract was applied in Texas. It was meant to be applied here because this is where they came to do these things. This is where they came to proofread it and print it and all the company officials signed it

here. So laying aside entirely the legal concept of where it was executed, [188] nevertheless we would urge the Court that this is the very strongest evidence that it was meant to be applied here because this is where they came to do the deed and get it circulated and get it signed by the company officials and put it in final form. But turning now to the basic inquiry of the case, as we stated yesterday the Taft-Hartley Act in 14b speaks in terms of where a contract is executed or applied and they used the disjunctive word "or", and we would like to advise the Court as late as May of this year the Government itself through its highest office of making announcements of the construction of these things to guide National Labor Relations Board field offices around the company made a determination reinforcing what I have just told the Court, and without going into this in any length, I would just advise the Court that the general counsel for the [189] NLRB in his May 30, 1972 quarterly report of important case developments, members of the Labor Board, which I am sure Mr. Dixie has or I will make available to him, discussed the situation where a company and the Union got in a fuss because they were bargaining for a contract and the Union insisted on a agency shop clause being put in there and the company said you can't do that because it violates the State law, and the Union persisted, so the company filed an unfair labor practice charge against the Union and the General Counsel for the N.L.R.B. was called upon to pass on the matter and he stated that the United States Supreme Court in the Shimmerhorn case holds that an agency shop clause does violate the State Right-to-Work law and it is properly prohibited by a state and I would like to read one sentence out of that: "In a case before the General Counsel the highest [190] state court had not ruled on the illegality on the agency shop clause under the State Right-to-Work Law having declined to do so in the one case which this issue reached the Court, but the State Trial Court and the State Attorney General had both construed the law to include the agency shop clause as the prescribed form of Union

security and these opinions in the absence of disagreements from the state Supreme Court were viewed establishing that the state law prescribed the execution or enforcement of an agency shop agreement. I think that is important to us in several respects. The Court is aware that the Attorney General of Texas has so held. The opinion is in evidence and I have a communication from the Attorney General's office dated this year advising that that opinion is still in force and effect. This shows that the Government itself [191] acknowledges the validity of these and also the point I am addressing myself to is the prefaces that it is either the execution or enforcement of this labor contract within the borders of the state and so, again, in our case here it is our position that regardless if they had executed it in New Jersey or Arkansas or anywhere, if it is to be applied here and if it violates the public policy of the State of Texas, it should not be enforced here and this is recognized by the Government itself. Now in the case Mr. Dixie mentioned to Your Honor yesterday, the Mustang Aviation case about the extra-territorial effect of the Texas law, we think that is begging the question. It speaks of extra-territorial effect and this is not present in our case here. We would submit, for instance, in the Mustang Aviation case a man from Texas went up to Colorado and was killed in an air- [192] plane crash and the Supreme Court of Texas held that our Wrongful Death Statute does not have extra-territorial force, and that is acknowledged to be so and yet the Court went right on to say in headnote 2 of the opinion that this statute, this Texas Wrongful Death Statute, was intended to take care of the rights of a Texas citizen wherever he might die and wherever he might go and a cause of action arise. They pointed out that the legislature has vested rights in the Texas citizen and so in the case I think that is important for two reasons. First, it shows that Texas citizens are entitled to protection of the law, Texas residents, wherever they might go, but in our case bring it down to the Court's remarks yesterday, the extra-territorial effect, where is this contract being applied, and I

think the truth the Court has heard heretofore establishes that the employees under this labor contract [193] are actually within the State of Texas, physically located here, frequently and repetitively. They all come here from time to time, some of them more than others. The proof shows that sixty percent of them were actually hired within the State of Texas. The active hiring took place here. The proof shows that one hundred percent of them, if their employment is severed, will be terminated in the State of Texas. One hundred percent of them will be actually terminated in the State of Texas when their employment is ultimately terminated, whether its because of retirement or what-have-you, the deed is done here in Beaumont, Texas. The proof shows that the employer's manager and all of his staff, in all of the departments are here, they live in the City of Beaumont, and they have a building out here where they conduct the business. Vacation payment, the checks are issued [194] here, the allotment checks are issued in Dallas, the U.S. income tax on every man is computed in Texas and handled in Texas, financial dealings totaling millions of dollars are done here, and this goes to the contention of Mr. Dixie that we are trying to apply a Texas statute in the extra-territorial manner and the point, our contention is that that is not correct because of the vast amount of business that is done here, particularly in the field of labor relations, as well as provisioning of the ships and taking care of the needs and physical needs of the business itself. Now we have shown also—

The Court: I don't think you need to emphasize the involvement of Texas in this operation. I don't think you need to do that. I think the Court would have to make that finding.

Mr. Hambright: Yes, sir.

[195] The Court: You may—

Mr. Hambright: Well, may I advise the Court of one other statute?

The Court: The only question I had was the matter of application and you have explained it sufficiently to the Court, and I am willing to go ahead and proceed with the trial. In fact, I had already made up my mind to do so anyway, and I don't want to curtail counsel in his argument, I think there will be time for that at the conclusion of the evidence. Now since you have made your statement, in fairness to Mr. Dixie I think we should give him a chance if he wishes to. Frankly, I don't know how you can enlighten the Court any more at this time, it might be because I think we ought to go ahead with the evidence.

Mr. Dixie: I think so.

The Court: Then you may make your arguments later.

Mr. Hambright: Thank you, Your [196] Honor.

The Court: All right, you may proceed.

(Reporter's Note: Whereupon Mr. Knepper resumed the witness stand.)

REDIRECT EXAMINATION

By Mr. Hambright:

Q. Mr. Knepper, do you know whether or not this labor contract contains what is called a dues check-off clause?

A. Yes, sir, it does.

Q. In essence what does this clause say?

A. It provides that an employee who wishes to can notify the company through a prescribed form that he would like his initiation fee or Union dues deducted from his pay and forwarded to the Union. It also has annual escape clauses in it.

Q. Does it have a form that the employee has to sign?

A. Yes, sir, the form is prescribed in the agreement, labor contract.

Q. What page is that on, do you recall?

[197] A. If I had an agreement I could find it for you. I don't have one in my hand.

Q. Here is one, sir.

A. On page 3 the format is given for the dues check-off letter.

Q. All right, sir, does this authorization run from the employee to his employer?

A. Yes, sir, it prescribes that it be addressed to Mobil Oil Corporation Marine Transportation Department, Gulf East Coast Operations, P.O. Box 3444, Beaumont, Texas, 77704.

Q. Are these dues check-offs sent to you here in Beaumont by the employees?

A. Yes, sir, we have a considerable number of them.

Q. Do you have there after computed the monthly amount of money that you must send to the Union?

A. Yes, sir, that is done.

Q. Is that done by your office in Beaumont, Texas?

A. Yes, sir, Mr. Shanigan's personnel section.

Q. All right, sir, do you then notify the Union of the correct amount and make payment to the Union?

[198] A. Yes, sir, we prepare a letter to the Union and tell them what men are covered and what new additions there are and what releases.

The Clerk: Plaintiff's Exhibit 14.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit 14 for identification.)

A. We send that letter along with an authorization to our Dallas payroll office to send the Union the proper

amount of money with a check, a check with a letter.

Mr. Hambright: Your Honor, may I show this to counsel before the witness, the copies are not legible but he has the original in his file.

The Court: All right.

By Mr. Hambright:

Q. Mr. Knepper, I show you what has been marked as Plaintiff's Exhibit 14, with two sheets, will you tell us what that is?

A. Well, the first sheet is also from my office over my signature to our payroll people in Dallas, and the topic is O-CAW dues. It instructs [199] them to draw a check on a certain amount, payable to the Local Union and mail it in with the letter which I am furnishing you in the envelope.

Q. What is the date of that letter, please, sir?

A. This is August 3rd, 1971, but this is typical of the letter that goes every month.

Q. You do that every month?

A. Yes, sir.

Q. All right, sir, how much is the amount of money?

A. It says please draw a check in the amount of $2,253.00.

Q. All right, and do I understand you to say that you sent this to Dallas and told them to draw the check in Dallas, and mail it to the Union.

A. That is correct.

Q. All right, on the second page of that exhibit what are those computations there appearing in that letter to the Local?

A. Well, this is a letter to the Local which would accompany the check. It says: "Enclosed is our check for

$2,253.00", and that it represents dues and initiation fees for all OCAW [200] members with authorized dues deductions in force on January 1, 1971, and it tabulates how many members there were at $8.00, and how many initiation fees at $15.00, and what the total is and then we go on and tell them who the new people are on the list and also which names are deleted.

Q. Is all of this body of work done in your office?

A. Yes, sir.

Q. It is done each month?

A. It is monthly, yes.

Q. Would you say that this two thousand some odd dollar sum is or is not fairly representative of the amount of money that goes off each month to the Union?

A. Yes, sir, it is typical.

Q. Typical?

A. Yes, sir.

Q. All right, sir. Thank you.

Mr. Hambright: We offer as Plaintiff's Exhibit No. 14 this, Your Honor.

The Court: All right.

(Reporter's Note: Whereupon [201] Plaintiff's Exhibit No. 14 was received in evidence.)

By Mr. Hambright:

Q. Mr. Knepper, is this the only point of contact between your company and the Union financial matters of this sort, your office in Beaumont, Texas?

A. Yes, sir, this isn't done anywhere else.

Mr. Hambright: Mark that as Plaintiff's Exhibit 15.

The Clerk: Plaintiff's Exhibit No. 15.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 15 for identification.)

By Mr. Hambright:

Q. I hand you what has been previously marked as Plaintiff's Exhibit 15. Would you identify that, please, sir?

A. This is a photograph of the building in which my offices are located in Beaumont.

Mr. Hambright: May we have this admitted, Your Honor, would you hand that up?

The Court: Yes.

[202] (Reporter's Note: Whereupon Plaintiff's Exhibit No. 15 was received in evidence.)

By Mr. Hambright:

Q. Now, Mr. Knepper, yesterday Mr. Dixie asked you to give him some identification on a number of fifth level grievances that were handled in your office in Beaumont, Texas, do you recall that?

A. Yes, sir, I do, sir.

Q. Do you recall the estimate of the number of such occurrences that you gave Mr. Dixie, what number did you give Mr. Dixie yesterday as the approximate number of grievances that have been so handled?

A. Well, I believe in response to your question, sir, I said about twenty.

Q. All right, sir, you told Mr. Dixie about twenty and he asked you some identification and you promised to look into it?

A. Yes.

Q. All right, sir, have you looked into it and do you wish to change the number or clarify that number?

A. Yes, sir, we have gone through our grievance [203]

file and I find that during the course of this agreement to date we have had 26 formal fifth level grievances presented to my office in Beaumont. In addition we have had three letters which are not on a grievance form which I would consider fifth level grievances.

Q. All right, sir, now, in addition to that I will ask you whether or not right after this contract was first placed into effect and before any actual number of grievances had risen you had an occasion to meet with Union representatives in your office in Beaumont, Texas, to discuss the administration of the labor contract?

A. Yes, sir, that is true.

Q. I will ask you if you have in your possession any type of personal notes or scratch sheets or whatever you might call it?

A. There is a number of notes in our grievance file. As I say, as I said to Mr. Dixie yesterday, we don't keep formal minutes of the formal meetings, often we transcribe the notes after the proper action has been taken. I did find one that was dated in December of 1969.

Q. All right, sir, would you please refer to [204] your notes of the December, 1969 meeting, when you find that?

A. Yes, sir, I have a Xerox copy of a memorandum that I wrote in longhand. Do you want me to describe it?

Q. Just let me ask you these questions and it might shorten it. What is the date of the meeting?

A. This is dated December 12, 1969.

Q. At that time your new labor contract had been in force approximately how long?

A. A month and twelve days, I suppose.

Q. All right, sir, who was present at that meeting?

A. The meeting, my notes show I met there with John Perrio and L. A. Papich in my office.

Q. And is that Mr. Perrio who was served in this case as President of the Union?

A. Yes, sir.

Q. Mr. Papich is your—

A. Maintenance superintendent.

Q. All right, sir, would you tell the Court in your own words what was the subject matter of some of the highlights of that meeting?

[205] A. These notes are fragmentary, but I can reconstruct some of the things. One note says Siofic not paid for Labor Day overtime for 0000 to 1500 when strike began. Agreed to investigate. Then I have a note of overtime is payable and then another note personnel section. So I evidently advised the personnel section that they should take care of this matter.

Q. Did this involve a dispute between the Union and the company as to the proper manner of payment of this individual or at least a dispute against your hands?

A. Yes, sir, I think it would be a dispute that would be a grievance if they hadn't settled it at that time.

Q. Did you make the decision?

A. I certainly did, yes, sir.

Q. Did you talk about others at that meeting?

A. Yes, there was also a note that said Siofic requested longshore rate for offloading cargo and my note after that says refused and the note out in the margin says no action required. This evidently is one that the Union didn't care to carry further because I don't find any records [206] of a formal grievance coming out of this one.

Q. So I take it then that the last one was settled in the Union's favor and that one was settled in the company's favor? Is this a fair statement or have I oversimplified it?

A. No, I think this is correct.

Q. Did you do any other business that day?

A. I have a note here that says that "Sacony-Vacuum fire and boat drill held on Saturday. Overtime not paid to those off duty. Agreed payable." This was a new clause in our new agreement which evidently wasn't clearly understood by the officers on the ship that implemented grievances, implemented the contract, at least on a fifth level, and so I have a note here, it says agreed payable. I also have a note L.A.P. discussed it with Master. This would be a case where I agreed that they had interpreted the contract correctly that we would pay the people and also that we instruct our supervisors that they should comport themselves so.

Q. Do I understand that those initials refer to Mr. Papich?

A. Yes, sir.

[207] Q. Do I interpret that that you told him to tell the Master on the tankers henceforth to pay in accordance with the rulings you made?

A. Yes, sir.

Q. Now this business of a fire drill or boat drill, is it?

A. Yes, sir.

Q. And the question is what happens if that occurred on Saturday, is that it, when some people are off duty?

A. Yes, sir.

Q. Would you tell me if this matter would arise wherever a ship might be sailing at the time?

A. Yes, sir, wherever they had a fire drill on Saturday, it will.

Q. All right, sir.

A. The Master is required to have periodic fire drills.

Q. All right, now do you have any other business that day?

A. Well, there is a note here pertaining to an employee missed ship, inquired about pay, says would be payable as soon as his voucher is [208] received from vessel, and that the man would like to be rehired and we would investigate it and—

Q. Well, that is enough.

A. I can't tell from this whether we did rehire him or what we did, but this, I don't think was as much a grievance as a personnel problem, the man wanted some help with it.

Q. All right, sir, thank you, Mr. Knepper. Now in response to Mr. Dixie's request, once these formal grievances started coming in did you go through and compile a list of those last night?

A. Yes, sir, we did.

The Clerk: Plaintiff's Exhibit 16.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 16 for identification.)

By Mr. Hambright:

Q. I hand you a list of some 29 numbered items marked Plaintiff's Exhibit 16. Was that what you looked up last night and had prepared?

A. Yes, sir, I prepared this by going through my grievance file.

Q. All right, I notice that the latest one on the list is dated February of 1972, and the earliest [209] one is dated February of 1970. So would you explain that?

A. I believe, sir, the latest one—unfortunately these are not in exact order. I believe the latest one is really March 17, 1972.

Q. All right, sir.

A. But the earliest one being in '70, I think the reason that there wasn't any earlier, that the strike ended in November of '69, and there just wasn't any that reached that stage prior to that time.

Q. All right, sir, but in any event, all of these arose under the present labor contract beginning in about February of 1970 and coming on down to date?

A. Yes, sir, that is correct.

Q. And this is the period inquired about yesterday, is that correct?

A. Yes, sir.

Q. All right, sir, were these matters submitted to you in the ordinary course of business of this employer?

A. Yes, sir, these came to me some by hand and some by mail, some were discussed before they were [210] formalized into a written grievance and all were answered from my office in Beaumont over my signature.

Q. Did you and your colleagues in Beaumont, Texas, who—such as Mr. Papich or Mr. Shanigan, did you make the decision as to what happened to these 29 fifth level complaints?

A. Very definitely, sir.

Q. Do these 29 numbered items represent matters had they not been resolved at that meeting in your office in Beaumont, could have proceeded to arbitration?

A. Yes, sir, these were all fifth level grievances and the next time would be arbitration if they weren't settled.

Q. I believe you testified yesterday about four had gone to arbitration under this new labor contract?

A. Yes, sir, that's correct.

Mr. Hambright: We offer Plaintiff's Exhibit No. 16, the list of 29 top level meetings, and Mr. Dixie yesterday requested that we produce minutes and I would like to state to [211] the Court and to counsel that we welcome any interrogation concerning any of those but the witness has testified that he does not in all cases have notes about these, and so we are not offering any additional notes at this time, but—

The Court: The explanation will be accepted.

The Clerk: Plaintiff's Exhibit 17.

(Reporter's Note: Whereupon it was marked Plaintiff's 17 for identification.)

By Mr. Hambright:

Q. This Plaintiff's Exhibit 17 that has been marked, is that case sent you from the 23rd Region. May it please the Court, we offer in evidence what is marked as Plaintiff's Exhibit 17, it gives a decision of the National Labor Relations Board trial examiner in Houston, Texas, dated March 30, 1972, and it related to seafaring employees. May that be admitted, it was in our pre-trial order?

[212] The Court: Sir?

Mr. Hambright: May this be admitted?

The Court: Yes, it may be admitted.

(Reporter's Note: Whereupon Plaintiff's Exhibit 17 was received in evidence.)

Mr. Hambright: We pass the witness.

The Court: Do you have any further questions?

Mr. Dixie: Just a few, Your Honor.

RECROSS EXAMINATION

By Mr. Dixie:

Q. Mr. Knepper, do you have Plaintiff's Exhibit 16 before you?

A. Yes, sir, I do.

Q. In the left-hand column you have the date of the grievance?

A. Yes, sir.

Q. Is that the date on the grievance form?

[213] A. Yes, sir, that is the date that appears next to the Union officer's signature.

Q. Then I notice in that left-hand column sometimes you have the word "letter written under the date", does that mean that the matter was submitted to you by a letter instead of by the regular grievance form?

A. Yes, sir, that's what that means.

Q. Now in the next column is entitled "submitted by", does that show the name of the man who signed the grievance form or the letter?

A. Well, generally there are two people that sign the grievance, the grievant himself and the Union officer that's carrying the grievance for him, this is the signature of the Union officer who presented the grievance.

Q. So that the submitted by means the signature on the form, right?

A. The signature of the Union officer on the form.

Q. Now the next column you give us the subject, in the next column you give us the name of the grievant, that is, the individual employee who was involved in the episode, is that correct?

[214] A. Yes.

Q. And then the next column is entitled "Date of Reply". Is that a date on a written communication from the Company to the Union?

A. It is, yes.

Q. Now those are the five columns that you have given us here and I notice that you don't have anywhere on here the date of these so-called hearings. Do you have dates of hearings in these matters?

A. Sir, I have never said that we have formal hearings in these matters.

Q. You never said. Now let's see, your lawyer asked you had they not been resolved in fifth level meetings, they would have gone to arbitration, and you said yes. Now what is the date of these meetings or hearings or anything else you want to call them?

A. I don't have an accurate record of when each one of these were discussed.

Q. Now then, when you had quarterly meetings in New York City the company prepared formal minutes, didn't they?

A. No, sir.

[215] Q. Didn't you send minutes to the Union of what you did and discussed?

A. Not minutes, no, sir.

Q. What did you send?

A. Occasionally we would send them a letter telling them of what we agreed or disagreed with. We never have kept minutes, formal minutes that are kept, the notes we kept for ourselves.

Q. Well, doesn't this get down to the proposition that at Beaumont, from time to time, you discussed with Mr. Perrio your mutual business of problems that arise aboard ships, isn't that what this comes to?

A. Certainly we discussed from time to time mutual problems. We have always discussed grievances with him.

Q. But the contractual grievance procedure takes place on ship, does it not, in the first three steps?

A. Yes, sir, yes, indeed.

Q. And it takes place in New York in arbitration, is that correct?

A. It has, it doesn't necessarily have to.

Q. Well, doesn't this get down to the proposition that

Q. And the thing that happened in Beaumont is [216] that you receive letters and you answer by letter?

A. And make decisions.

Q. Is that correct?

A. And make decisions.

Q. And you make decisions. All right, may I see the file you are looking at when you told us about a meeting in 1969, with Mr. Papich.

A. Is it proper for me, Your Honor, there is a number of confidential company notices in the file.

The Court: Maybe you had better check with him, Mr. Hambright, and advise him in this regard.

Mr. Hambright: Could I have that request again, please?

Mr. Dixie: I want to see the file he examined when he told us that he found references to a meeting between him and Mr. Perrio and Mr. Papich in December of 1969.

Mr. Hambright: Well, that is his work sheet, I believe he read from his own notes there. I thought you were [217] asking for the entire series of confidential file.

Mr. Dixie: I thought that's where it was. I thought that's where he was looking.

The Court: All right, if you are referring to these notes, if you have no objection to showing them to him you may

do so. If you have an objection you may state your objection.

Mr. Hambright: No objection, Your Honor.

The Court: All right.

(Reporter's Note: Whereupon there was a short pause in the proceedings.)

By Mr. Dixie:

Q. All right, now then, is this one piece of paper the only written reference you can find in your records of a meeting at Beaumont, between the company and the Union?

A. That is the only piece that we turned up last night.

Q. That's the only one you turned up. All right, nothing for 1970? Nothing for 1971 or 1972 in your [218] records, right?

A. I can demonstrate that some of these grievances were dated the same day that I received them, which clearly reinforces my memory that Mr. Weeks and Mr. Perrio handed it to me that day.

Mr. Dixie: I pass the witness.

The Court: Anything further, Mr. Hambright?

Mr. Hambright: No, Your Honor.

The Court: All right, Mr. Knepper, you may step down.

You may call your next witness.

Mr. Hambright: If the Court please, the Plaintiff will rest. I would advise the Court that the pretrial order was signed earlier this morning.

The Court: It may be filed.

Were you sworn with the other witnesses yesterday?

The Witness: Yes, sir.

The Court: Have a seat. You may proceed.

[219] DONALD SANHUEZA, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Dixie:

Q. Will you state your full name?

A. Donald Sanhueza.

Q. How old a man are you?

A. 32.

Q. Where do you live?

A. New Jersey.

Q. What position do you occupy with the Union?

A. Financial Secretary.

Q. And do you also work for the company?

A. Yes, sir, I do.

Q. How long have you been working for the company?

A. Fifteen years.

Q. Fifeen years, and in what capacity do you [220] work for the company?

A. Oiler.

Q. You are an oiler?

A. That's right.

Q. Now then, I want to ask you a few questions. Has the Union ever asked the company to discharge a new employee because he didn't want to join the Union?

A. No, we haven't.

Q. Members of the Union except those who are new on board?

A. That's right.

Q. Will you tell the Court how many of the people are on check-off? That is, how many of them have signed check-off authorizations to take out Union dues from their checks?

A. Approximately 281.

Q. Do you have members who pay by hand?

A. We do.

Q. Approximately how many members pay by hand?

A. Approximately some fifteen to twenty.

Q. All right, Mr. Sanhueza, we already have evidence here that a man works approximately sixty days on board ship and then he has thirty [221] days off. Are you in a position to give us a little bit more precise figures on that?

A. We work approximately 85 days and off approximately 37.

Q. On 85 and off 67?

A. 37.

Q. 37. That is the general pattern now. Now in the 85 days that a man is on board ship what hours of the day does he work? How many hours a day does he work?

A. Eight hours a day.

Q. Eight hours a day. Is that divided into watches?

A. Watches, they work four hours and off eight, back for four.

Q. Will you tell us where the people usually catch the ships that they are working on? Where do they board ship?

A. Any port the ship may be, it varies as to what port they may be at. The Port of Maine, Portsmouth, Providence, New York, New Jersey, Corpus Christi, Beaumont, really all of them.

Q. Let us suppose that there is a man who lives in Beaumont, Texas, and let us suppose that he is [222] scheduled to board a ship on the 1st day of July, and let us suppose that that ship is in the Port of New York, on the 1st day of July. Would you tell us how that man gets to New York to board the ship?

A. The company will fly the man to New York to meet the ship.

Q. Does the company try to schedule these men so they catch the port—correction, catch the ship at the port closest to their homes?

A. Right.

Q. They try to do that?

A. Yes, sir.

Q. Does it always work out that way?

A. No, sir, it doesn't.

Q. Are there any occasions when a man is on the 37 days of vacation and will be called back to work sooner than 37 days?

A. Yes, sir, they do.

Q. What would be that occasion?

A. Usually in creating—they will call a man back early sometimes just due to illness or emergency leave of absence. They will call other people back.

[223] Q. Are there circumstances in which a man is scheduled to work 85 days but doesn't work his full 85 days?

A. There are some occasions.

Q. What would be that type of occasion, would that be sickness or injury or family emergency?

A. Surplus of men, that particular rating.

Q. What is your answer?

A. Yes, sir, they would relieve him early.

Q. Now then, do you know whether the company provides medical facilities in all of the ports to which its ships go?

A. Subject to Public Health hospitals.

Q. All right, now the company has one doctor to whom they refer or one or more doctors in the refinery to whom they refer the men when it is necessary. I want to ask you whether or not the company has doctors in New York to whom it refers the men when necessary?

A. Yes, sir, they do.

Q. Do you know about other ports?

A. Providence, Rhode Island.

Q. Do you know about any others?

A. I am not familiar with them.

Q. Now we have evidence before the Court here [224] that the MOBIL LUBE, the S/S MOBIL LUBE is on charter in the Pacific Ocean at this time. Will you tell us whether or not this is the only charter of this kind for foreign voyages that you know about?

A. I believe they have one more.

Q. Which one is that?

A. The MOBIL FUEL.

Q. Have they had charter ships, ships under charter before, before the MOBIL LUBE and the MOBIL FUEL, that you know about? Were there any charters last year or the year before is the question I am asking?

A. I believe so.

Q. What ships do you believe were under charter?

A. I believe the MOBIL GAS was running a charter run.

Q. What?

A. MOBIL GAS.

Q. To whom was the MOBIL GAS under charter, do you know?

A. It is a firm in Texas City.

Q. And what was the normal run of the MOBIL GAS at that time, while it was under charter?

[22] A. Texas City to Boston.

Q. How long did that charter arrangement last, approximately?

A. Somewhere in the neighborhood of two months.

Q. Do you have knowledge of the fleet of ships of this company involved in this case going on foreign voyages?

A. Sir?

Q. In the past year?

A. Yes.

Q. Would you tell us the extent of that?

A. Usually they go foreign on a MFTS charter, plus the company sold two vessels which made offshore trips.

Q. Where would they go, what part of the world would they go to on the foreign voyages?

A. Well, two vessels that the company sold went to—I believe it was Spain, their destination point was—

Mr. Dixie: Your Honor, I am having trouble understanding my own witness. May I stand here?

The Court: Yes, you may.

[226] By Mr. Dixie:

Q. What was your last answer, when they were on foreign articles what part of the world would they go to?

A. The two vessels that the company sold went all over Europe. The only thing I can remember, I think their final destination was Spain.

Q. What was the name of the two vessels that the company sold?

A. The KOLINA and the SCIOTIC (phonetic).

Q. Approximately when were they sold?

A. About a year, a year and a half ago.

Q. About a year and a half ago? Before being sold were those two vessels primarily engaged in foreign commerce?

A. Yes, sir, they were.

Q. Were they manned by people that were covered by your labor contracts?

A. Yes.

Q. All right, did you, at my request, make a study of the time spent in Texas ports by the eight ships here involved during the last month?

A. Yes, sir, I did.

Q. What materials did you have available to [227] make that study?

A. From the logs that we receive from the company?

Q. Would you show us one of those so the Court can see what it is?

(Reporter's Note: Whereupon there was a pause in the proceedings at this time.)

Q. All right now this is regularly furnished to you by the company?

A. Yes, sir, it is.

Q. What information is on this?

A. It gives the date the work sheet was made up on this log and it has south and it has the name of the ship, docking in Beaumont at 0740 on 6-22, estimated time of departure at 1400 on 6-23, for Providence, Rhode Island.

Q. So they give you the time of arrival of a ship in Beaumont, and they give you the estimated time of departure?

A. Yes, sir.

Q. All right, then do they give it for all other ports?

A. Yes, sir.

[228] Q. Both in the Gulf Coast and on the East Coast?

A. Yes, sir.

Q. Do they give you the time when the ship is on the high seas?

A. No, sir, this is only the docking time.

Q. But you know that the ship has to be on the high seas in the meantime?

A. That's right.

Q. All right, now take your notes and give us the name of the ship, the period of time covered and the time that that ship was in the Port of Beaumont.

A. Well, one work sheet I have, the MOBIL ARROW from May 9th to June the 11th, total days being 34, total time spent in the State of Texas, 42 hours.

Q. 42 hours and 34 days for that ship?

A. That's right.

Q. Now go to the next one, give its name.

A. I have the ECLIPSE, April 27th to June 22nd, total of 56 days, total time in the State of Texas, 99 hours.

Q. By the way, that was all at Beaumont, or was [229] that—

A. Different ports in the State of Texas.

Q. All right, go to the next one.

A. The MOBIL FUEL, May 8th to June 7th, total days, 31; total time in Texas, 14 hours.

Q. Give us the next one.

A. The MOBIL GAS, June 1st to June 23rd; total days, 23; total time in Texas, 43 hours.

Q. Give us the next one.

A. The MOBIL LUBE, May 16th to July 8th would be a total of 56 days. No time in the State of Texas.

Q. All right, now then, from your knowledge, you come to Texas yourself regularly, do you not, when you are working?

A. Yes, sir, I do.

Q. Do you know from your own knowledge whether or not that time that you traced for the last month or so is typical of the normal operations of the company?

A. Yes, it is.

Q. All right, now let us say that a ship comes in to the Port of Beaumont for the purpose of [230] being loaded. Do the members of your crew perform any work other than aboard the ship? In other words, do they have any shore duties?

A. No, we do not.

Q. All the work you do is aboard ship then?

A. Yes.

Q. Do the men come ashore when the ship is in the Port of Beaumont?

A. If you are not working, yes.

Q. All right, how long would the men have shore leave to come ashore?

A. Well, if the ship docks exactly at a good time for that individual, he would have eight hours.

Q. Eight hours would be the maximum? Well, eight hours off is the maximum time off duty, is that right?

A. That's right.

Q. So the longest time that that individual could spend ashore would be eight hours, and that would be for his personal purposes?

A. Right.

Q. No duties to perform. Do you know whether or not the company provides stores and parts for their [231] ships in ports other than the Port of Beaumont?

A. Yes, sir.

Q. They regularly provide the necessary spare parts and repairs out of New York, as well as out of Beaumont?

A. All over.

Q. All ports? And they take on provisions in all ports?

A. Yes, they do.

Q. You have an office in New York?

A. Yes, sir.

Q. Do you have dealings with the company in New York?

A. Yes, sir, we do.

Q. What kind of dealings do you have with the company in New York?

A. We have all our meetings in New York.

Q. How often do you have those meetings?

A. Quarterly.

Q. Four times a year?

A. That's right.

Q. After those meetings are held does the company furnish you with any kind of summary or minutes of what was said and done at the meeting?

[232] A. They usually answer to what we spoke about with regard to if they can't settle a final grievance in New York, we prepare for arbitration.

Q. You tell the Court that you discuss the final settlement of grievances in New York and not in Beaumont?

A. Yes, sir, we do.

Q. Do you know Mr. Knepper here?

A. Yes, sir, I do.

Q. Have you ever come to Beaumont to discuss the settlement of grievances here with him?

A. I have never.

Q. Have you ever settled grievances that didn't go to arbitration? Have you settled grievances so as to avoid arbitration?

A. Yes, sir, we have.

Q. With whom have you settled?

A. With Mr. Knepper and his committee.

Q. Mr. Knepper and his committee, and what did the committee consist of?

A. Captain Papich, Mr. Dayton and Mr. Shanaghan.

Q. Do you know—are you the man who receives the dues, monies from the company each month?

[233] A. Yes, sir.

Q. Where do you receive it?

A. In New York.

Q. Where do you keep it?

A. In New York.

Q. Is Local 801 a part of any administrative district of the Oil Workers International?

A. Yes, sir, it is.

Q. What district does it belong to?

A. District No. 8.

Q. Where is District No. 8?

A. Union, New Jersey.

Q. Are you familiar with the fact that the Oil Workers District No. 4 is located down here in Texas?

A. Yes, I am.

Q. Do you belong to District 4 for any purpose?

A. No, we do not.

Q. Do you participate in District 4 activities for any purpose?

A. We do not.

Q. Do you have a staff man that helps—

Mr. Hambright: May it please the ....

[235] Q. What is his name?

A. Mr. Staggart.

Q. Where does he live?

A. Pennsylvania.

Q. What district is he attached to?

A. District No. 8.

Q. Does he have anything to do with the Texas District administratively?

A. No, sir, he does not.

Q. Does he ever come to Texas to do business with the company that you know of?

A. No, he doesn't.

Q. It has been claimed here that you have all of your meetings in New York for the convenience of the Union. Do you know why you have meetings in New York, Mr. Sanhereza?

A. They have, Mr. Knepper has his staff of Mr. Fisher, his supervisor, and legal counsel.

Q. Have you ever heard Mr. Knepper discuss with you that he intended to confer with his associates, like Mr. Fisher and Mr. Luck, before making some kind of a deal with you?

A. The only time I ever heard that was at [236] negotiations, yes.

Q. At negotiations. All right, are employees hired in New York?

A. Yes.

Q. Do you know if employees are fired in New York?

A. If they are fired aboard ship it would be from New York, wherever the ship may be.

Q. In other words, tell the Court what has been the practice about what port a man will leave the ship from because he has been terminated by the Master.

A. The Master has the authority to dismiss anybody at any port.

Q. All right, is that in fact done?

A. Yes, it is.

Q. Now we have in evidence here a letter written in July of 1971, a Union news letter to your members that discusses this agency shop. I want to ask you whether you addressed that communication to the company or whether you intended for the company to get it or see it?

A. It was sent to the Union membership.

[237] Q. And was it sent to the Union membership only?

A. That's correct.

Q. The statement has been made here that there is at least one of these ships in the Port of Beaumont one hundred percent of the time or maybe I have misunderstood it, do you know whether or not that is the truth, that there is at least one ship here one hundred percent of the time?

A. No, sir.

Mr. Hambright: May it please the Court, I did not hear that statement from any witness, and it was never uttered by me. I think it would be improper to use that question.

The Court: There might be a misunderstanding there, Mr. Dixie.

Mr. Dixie:

Q. In other words, have you come in aboard a ship, into the Port of Beaumont and seen that there was no other Mobil Oil ships in port when you got there?

A. Yes, sir.

[238] Q. How often has that happened?

A. Well, there is eight ships, they only reach Beaumont

approximately twice in a calendar month, so all the other days there wouldn't be no ship in.

The Court: I think we will have a little recess. We will stand in recess for fifteen minutes, that will be ten minutes after eleven by the clock in the courtroom.

The Marshal: Everyone rise, please.

(Reporter's Note: Whereupon a fifteen minute recess was taken and court resumed at 11:10 A.M.)

The Court: You may proceed. You may resume, Mr. Dixie.

By Mr. Dixie:

Q. Mr. Sanhueza, I am going to show you a draft of a document here which bears on its front page the notation: "Pension Plan for Unlicensed Seamen of U. S. Flag Ocean-going Tankers of the Gulf, East Coast Operations of the Marine Transportation Department of Mobil Oil Corpora-[239] tion". Do you recognize that document?

A. Yes, I do.

Q. What is the source of that document?

A. It describes the benefits that we receive of our pension plan and how it will be administered.

Q. All right, and who is the author of that?

A. The company.

Q. Do they present it to you?

A. Yes, sir, they did.

Q. Did you agree to it?

A. Yes.

Q. Do you sign it?

A. We signed the financial benefits that we receive.

Q. Now will you look at page 13 of that document and read to the Court the sentence about the laws of which state will govern the pension plan?

A. "The plan shall be governed by and construed in accordance with the law of the State of New York. Any interpretation of same by counsel of the corporation shall be exclusive as between corporation and it goes on and on".

Q. Is that the pension plan that is in effect [240] for your people now?

A. Yes, sir, it is.

Q. I pass the witness.

CROSS EXAMINATION

By Mr. Hambright:

Q. Mr. Sanhueza, I believe you testified a moment ago that you come to Texas regularly, is that correct?

A. Aboard ship, yes, sir.

Q. How long have you been employed with this employer?

A. Fifteen years.

Q. For fifteen years. Have you been coming to Texas regularly?

A. Aboard ship, yes, sir.

Q. Now, I believe you testified that there was some physical examination conducted in New York and perhaps elsewhere, you know of your own knowledge, do you not, that the company has a medical department in Beaumont, Texas also?

A. Yes, sir, I do.

Q. And you know of your own knowledge that more [241] physical exams are conducted there than any other place, don't you?

A. No, I do not.

Q. You testified that 281 employees were on check-offs. I take it this means the company is sending the Union money representing their dues?

A. That is correct.

Q. All right, sir, you know of your own knowledge that the money comes from Texas on the check-off letter, does it not?

A. Yes, I do.

Q. It is addressed to you as financial secretary?

A. No, it is addressed to the Local Union.

Q. Does it come to you as financial secretary?

A. My name does not appear on it but I receive it.

Q. You do receive it?

A. Yes, I do.

Q. And over the period of the last two or three years have you ever found any error or discrepancies on that?

A. Occasionally.

Q. Where do you go to get that clarified?

A. Usually I contact Mr. Shanaghan.

[242] Q. Mr. Shanaghan is in the courtroom, do you see him here today?

A. Yes, sir.

Q. You know him to be a resident citizen of Beaumont, Texas, do you not?

A. Yes, I do.

Q. He works for Mr. Knepper out here at headquarters office?

A. Yes.

Q. Mr. Shanaghan, I believe you testified that this so-called notice to employees went out to your membership and not to the company?

A. That's right.

Mr. Hambright: May I see Plaintiff's Exhibit 10?

(Reporter's Note: Clerk handing said exhibit to Mr. Hambright.)

By Mr. Hambright:

Q. Is this Plaintiff's Exhibit 10 the notice we are talking about?

A. Yes.

Q. That notice says in the second paragraph that if a new employee doesn't join the Union in effect you will have him fired, does it not?

[243] A. Yes, it does.

Q. Now, Mr. Sanhueza, there wasn't anything secrety about that notice, was there?

A. I don't really know what you mean by the word secret.

Q. You implied to Mr. Dixie that you sent that to your members but you did not send it to the company management and I am asking if you had made any effort to make that or keep that a secret?

A. No, it was addressed to the ship representative aboard ship for the sole purpose of Union members.

Q. You know of your own knowledge, do you not, that that was posted on the bullein board aboard the vessels?

A. No, I do not.

Q. If a company representative in the room, courtroom today, testified that he had saw it posted on the bulletin

board aboard ship, I will ask you this, would it be seen by members of the crew if it were on the bulletin board?

A. Possibility.

[244] Q. That's why you have Union bulletin board, isn't it?

A. That's right.

Q. Would it also be seen by non-members of the Union were it in fact posted on the bulletin board?

A. Yes, sir, it would.

Q. Would it also be seen by company officials who might go aboard ship on that bulletin board?

A. Yes, it would.

Q. You testified that in effect that notice says you were going to have the company fire a man that doesn't join the Union. Now it means what it says, does it not?

A. Yes, sir, it does.

Q. You told Mr. Dixie, however, that you all had never requested the company to fire anybody under that notice, is that right?

A. Yes.

Q. I believe you also told Mr. Dixie that everybody was a member of the Union?

A. Except new employees.

Q. Except anyone in the last thirty days, but [245] laying aside those, anyone more than thirty days I believe is a member of the Union, under your testimony?

A. No, sir, there are some that is after thirty that join.

Q. That some of them are delayed in joining?

A. That's right.

Q. But it is a fact then that if everyone is in the Union or else joins the Union within what you consider a reasonable time you, in fact, would have no reason to tell the company to fire anyone, would you?

A. I would not.

Q. All right, sir, and, as a matter of fact, when a man joins the Union you don't have any way of knowing personally, do you, Mr. Sanhueza, whether he did that voluntarily or whether he did it because of this notice stating he would be fired if he didn't?

A. No, I do not.

Q. Now I believe you testified that you had never been down to Beaumont for the purpose of talking to Mr. Knepper about a grievance?

A. That's correct, sir.

[246] Q. Now actually you are the financial secretary aren't you?

A. Yes, sir.

Q. You have other officers in the Union, don't you?

A. We do.

Q. Mr. Perrio is the President, isn't he?

A. Yes, sir.

Q. And you know of your own knowledge that he has been to Beaumont to talk to Mr. Knepper, don't you?

A. Yes, sir, I do.

Q. Do you have a man in there named Weeks?

A. Yes, sir.

Q. Is he an officer?

A. Yes, sir, he is.

Q. What is his official position?

A. Vice President.

Q. Vice President?

A. Yes, sir.

Q. Do you know of your own knowledge that he lives in San Augustine, Texas?

A. Yes, sir, I do.

Q. Don't you know of your own knowledge that he [247] has been to Beaumont to talk to Mr. Knepper about grievances?

A. I believe so.

Q. All right, sir, you wouldn't have this Court believe that because you personally, as financial secretary, had never been to Mr. Knepper's office to discuss grievances, that no one in authority in the Union has been to that office, would you?

A. To discuss formal grievances, no, sir.

Q. All right, sir, as a matter of fact, Mr. Sanhueza, you, yourself have been in the Beaumont office of this employer to discuss the administration of this very labor contract, have you not?

A. Once, sir.

Q. And what gentleman did you meet with?

A. Mr. Shanaghan.

Q. And again, that Mr. Shanaghan is the personnel supervisor?

A. Yes, sir.

Q. And he works with Mr. Knepper here in Beaumont?

A. Yes, sir.

[248] Q. Mr. Sanhueza, it is a fact, isn't it, that not only have you been here personally to talk to the company

officials, but you have mailed in many grievances to Mr. Knepper in the Beaumont office?

A. Yes, sir.

Q. You, yourself, personally have forwarded the formal, written grievance at the fifth level to Mr. Knepper in Beaumont, Texas?

A. Yes, sir.

Q. You have done it at least eight times under this particular labor contract, have you not?

A. Yes, sir.

Q. Now I believe you told the Court that they had some quarterly grievance meetings in New York City that you attended, do you remember those questions from Mr. Dixie?

A. Yes, sir.

Q. You talked about whether or not they drew up a report or minutes and you had some discussion about the notes of those meetings, correct?

A. Yes, sir.

Q. Mr. Sanhueza, I ask you if it is not a fact and don't you know that those meetings were discontinued over a year ago?

[249] A. Yes, sir.

Q. And don't you know they were discontinued at the request of the defendant in this case, the Union in this case?

A. Yes, sir.

Q. And since the time they were discontinued over a year ago, since that time the grievance machinery has been handled as Mr. Knepper testified to, with the fifth level in Beaumont, Texas? There has been no change in that procedure, has there?

A. It followed all the steps, sir.

Q. And the fifth step provides in Beaumont, Texas, on the face of the contract, does it not?

A. Yes, we mail the final form to Mr. Knepper.

Q. Or Mr. Perrio or Mr. Weeks or someone else could bring it in and discuss it, correct?

A. Yes, sir.

Q. Now you know this labor contract doesn't say where you have to arbitrate, does it?

A. Yes, sir.

Q. It does not say where you have to arbitrate, is that correct?

[250] A. That's correct, yes, sir.

Q. All right, it doesn't say where you have the first four subordinate levels of grievance hearings, does it?

A. No.

Q. But the last grievance level before arbitration, that's where we have the nut-cracking, isn't it, Mr. Sanhueza, that is, the go or no-go, is it not?

A. Yes, sir.

Q. And you know of your own knowledge that this labor contract fixed the definite location for that meeting in Beaumont, Texas, does it not, the fifth level?

The Court: I think this is argument, you have been over it once.

By Mr. Hambright:

Q. Mr. Sanhueza, you testified you sent in at least eight of these grievances to Mr. Knepper. You never sent one to anybody else, did you?

A. No, I did not.

Q. Now in regard to the Master's dismissal or an employee aboard ship, you told the judge—[251] you told this Court that this could happen anywhere, correct?

A. Yes, sir.

Q. That is not final, Mr. Sanhueza?

A. No, it is not.

Q. You know that a Master doesn't have the authority to discharge a man from the employment of this employer?

A. No, sir.

Q. And if he should dismiss a man aboard ship this is appealable to the employer, is it not?

A. Yes, sir, it is.

Q. And when so appealed it goes to Mr. Knepper in Beaumont, Texas, does it not?

A. Yes, sir.

Q. Now you spoke of the International Union organization in the various sections and districts. You weren't telling this Court that the International Union of the OCAW has no interest in these crews on these vessels down here in the harbor at Beaumont, were you?

A. Will you repeat that, sir?

Q. Mr. Sanhueza, do you know a gentleman named Lefty Haven?

[252] A. Yes, sir, I do.

Q. Is he present today in the courtroom?

A. Yes, sir, he is.

Q. Is he an International representative of the OCAW?

A. Yes, sir.

Q. Was he served with process in this very lawsuit?

A. Yes, sir.

Q. And he is a resident of Port Arthur, Jefferson County, Texas, is he not?

A. I believe so.

Q. And you know of your own knowledge that that gentleman has been aboard these tankers in the Port of Beaumont talking to the employees and working on labor relations, do you not?

A. No, sir.

Q. I will ask you whether or not Mr. Perrio, the President of the Union, has not informed you that Mr. Haven has been aboard those vessels in Beaumont?

A. I believe during the strike, sir.

Q. So when you tell the Court you don't know it, you are saying you have no personal knowledge, [253] but you have heard from Union officers that he has been there?

A. Yes, sir.

Q. Mr. Sanhueza, when you spoke to the Court about these ships' locations and the computations you made of travel time and port time in Beaumont, you weren't plotting in there the river time, were you?

A. No, sir.

Q. So that if a ship came to the bar and then passed through Sabine Pass and then came up to Port Arthur, and on through mid-county and up to Beaumont, it would actually be in the Neches River some appreciable amount of time, would it not?

A. Approximately twelve hours or so.

Q. And this would be true in Houston, or other ports where there are access places a ship must navigate, is this correct?

A. Yes, sir.

Mr. Hambright: I pass the witness.

The Court: Anything further, Mr. Dixie?

[254] **REDIRECT EXAMINATION**

By Mr. Dixie:

Q. How have you been settling your grievance discussions since you discontinued your quarterly meetings?

A. By mail, sir.

Q. By mail?

A. Yes, sir.

Mr. Dixie: I pass the witness.

RECROSS EXAMINATION

By Mr. Hambright:

Q. Did I understand you to say by the officers?

A. By mail.

Mr. Hambright: I am sorry, I thought you said by officers.

The Court: By mail.

The Witness: By mail.

The Court: All right.

By Mr. Hambright:

Q. And this mail has been addressed to Mr. Knepper in Beaumont, Texas, is that correct?

A. Yes, sir.

[255] Mr. Hambright: That's all.

The Court: All right, sir, you may step down.

Mr. Dixie: Just one more short witness, Your Honor.

Mr. Perrio.

JOHN PERRIO, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Dixie:

Q. Your name is what?

A. John Perrio.

Q. And how long have you been working for Mobil Oil Company?

A. Sixteen years.

Q. What capacity?

A. Cook and steward.

Q. Where do you live?

A. I live in Houston, Texas.

Q. What position do you occupy with the Union?

A. President.

[256] Q. All right, now, Mr. Perrio, we have been over everything in this case and I want to ask you to tell the Court briefly what is the nature of your dealings with Mr. Knepper here in Beaumont, in carrying out these Union contracts?

A. I go aboard ship, the men come to me with a beef, I try to settle the beef, generally once a week with Mr. Knepper, sometimes by phone and the majority of the time by phone, informal, always informal, and if it is not settled there, then a grievance is gotten by the man up north, generally on a ship by Mr. Sanhueza, then it is mailed, sent to me, I sign it, Mr. Sanhueza mails it to Mr. Knepper.

Q. After a grievance is filed and becomes a formal grievance instead of what you just called a beef?

A. It is a beef.

Q. Do you have hearings of any kind in Beaumont to settle those grievances?

A. At times there may be informal meetings.

Q. And how often would that happen?

A. Oh, I would say maybe once a week, maybe once [257] every three weeks.

Q. Would you tell us how a majority of the grievances are disposed of?

A. They are—when the grievance is sent to the company by mail then we have a quarterly meeting, we act by quarterly meetings and we have all of the grievances that we do have then.

Q. It has already been brought out that all of your quarterly meetings have been held in New York, is that right?

A. That's correct.

Q. After you discontinued your quarterly meetings how have you gone about settling your grievances?

A. Through the mail.

Mr. Dixie: I pass the witness.

CROSS EXAMINATION

By Mr. Hambright:

Q. Mr. Perrio, did I hear you say that you go aboard the ship yourself and receive grievances from the men?

A. Beefs, not grievances written.

Q. Well, do these beefs have to do with the [258] rights of the seamen under the collective bargaining agreement?

A. That's right.

Q. And you go and talk to Mr. Knepper about this about once a week, you said?

A. Just about, sometimes.

Q. Is it to the Union's best interest to get those matters settled at the first meeting with Mr. Knepper?

A. I is best to be done aboard ship with the Master, then Mr. Knepper.

Q. Assuming that it wasn't settled by the Master and it got to be a beef, is it to the Union's best interest and the best interest of the employee to get it settled when you go visit Mr. Knepper, isn't that right?

A. That would be right.

Q. Sometimes you think it is the best interest of the company also, do you not?

A. I would think so.

Q. As a matter of fact, sometimes you even state to Mr. Knepper that it would be to the best interest of the company if he made a bargain with [259] them and settled their controversy. You have said that, have you not?

A. I may have.

Q. And when you are out there talking to Mr. Knepper once a week about these beefs, what is your bible, what documents do you refer to?

A. The contract.

Q. The labor contract, that is marked Plaintiff's Exhibit 1 in this lawsuit, is that it?

A. That's right.

Q. That contract has over one hundred numbered paragraphs in it, does it not, Mr. Perrio?

A. Approximately.

Q. And you have some members of the Union that reside in the State of Texas, is that correct?

A. That is right.

Q. Over one hundred of them?

A. More or less.

Q. And then you—well, you have got more that live in Texas than anywhere else, have you not?

A. No, I wouldn't say that.

Q. You have got more that live in Texas than any other single state, do you not?

A. All right, yes.

[260] Q. You will go with me that far?

A. Yes.

Q. Mr. Perrio, as President of this Union I will ask you whether or not membership in your Union is voluntary in the State of Texas?

A. It is.

Q. Sir?

A. I say it is voluntary.

Q. Did you say it is?

A. It is.

Q. All right, sir, what do you mean by the statement to me that Union membership is voluntary in the State of Texas?

A. What do I mean by this?

Q. Yes.

A. I cannot go to the company and request that they be discharged.

Q. And why do you say that, Mr. Perrio?

A. Sir?

Q. Why can you not go to the company and insist on this discharge?

A. Well, I would say it would be a violation of the Texas Right to Work Law.

[261] Q. Have you known that of your own knowledge, haven't you?

A. No, we didn't know this.

Q. You found it out later?

A. When Mr. Knepper told us about it and we didn't know it was a violation then.

Q. All right, as a matter of fact you heard Mr. Sanhueza testify that all the employees are in the Union or else get in the Union within a reasonable time. You heard that, didn't you?

A. That's right.

Q. So that if all of them are in the Union or get there eventually, you really have no cause to ask the company to fire anybody, do you?

A. No, we would have no problem.

Q. And when these people do join the Union you don't know whether they are operating under this threat, this notice that was sent out by the Union, whether they really want to get in or not, do you?

A. Well, the ship's representative aboard ship is the man who contacts them before I do and the Union officers themselves would not be involved.

Q. I show you Exhibit 10, and I will call your [262] attention to the part that's got the blocks drawn around it, is that the Union notice that you put up on the bulletin boards?

A. This is the Union notice but we do not put it on the bulletin boards.

Q. All right, sir. Well, it is a notice that you published to allyour members?

A. That's right.

Q. You gave it wide circulation, did you not?

A. This is true.

Q. And the part where the blocks are around it says we intend to exercise our right to have the employment of any unlicensed seaman terminated who does not join or pay dues to the Union, did you write that?

A. No, I did not.

Q. But you endorse it as being the message, don't you?

A. Yes, sir, I do.

Q. Does that say anything about exclusion of Texas employees, Mr. Perrio?

A. It does not.

Q. Mr. Perrio, if it is testified that that [263] notice has been placed aboard, on the bulletin board aboard the vessels belonging to this employer manned by employees that are in your Union, you would not deny that, would you?

A. No, I would not.

Q. You have testified that you didn't put it there yourself, is that right?

A. This is true.

Q. Mr. Perrio, in this lawsuit you did receive service and notice of the case, did you not?

A. Yes, sir, I did.

Q. Was that delivered to you by the United States Marshal in your office in Beaumont, Texas?

A. Yes, sir, it was.

Mr. Hambright: I pass the witness.

The Court: Anything further?

Mr. Dixie: No more questions, Your Honor. The Defendant will rest.

The Court: All right, Mr. Perrio, you may step down.

Do you have anything further, Mr. Hambright?

[264] Mr. Hambright: We have a very short, very short rebuttal which I think we can cover very quickly.

The Court: All right.

I believe we will wait until after lunch.

Mr. Hambright: Yes, sir.

The Court: We are going to stand in recess until fifteen minutes until 2:00 o'clock. We will stand in recess until that time.

The Marshal: Everyone rise.

(Reporter's Note: Whereupon the Noon recess was taken and court resumed at 1:45 P.M.)

[265] AFTERNOON SESSION

The Court: Please be seated. We are ready to proceed, Mr. Hambright.

Mr. Hambright: If it please the Court, the defendant just before noon announced that they rested. The plaintiff would now likewise rest and ask if the Court would receive a closing statement?

The Court: All right, you may proceed with your summation.

Mr. Hambright: Thank you.

CLOSING ARGUMENTS

By Mr. Hambright: Your honor, the position of the plaintiff in this case is that regardless of where this labor contract may have been signed by the parties that part of it in violation of the Texas Public Policy cannot properly be enforced in the State of Texas. The parties themselves recognize in their labor contract that part [266] of it may be invalid. They have got their savings clause or validity clause in there which talks about what might happen if a Court should determine that part of the contract is void. That's on Section 11, page 6.

United States Supreme Court had something to say about these savings clauses. In the case of Rockaway News it considered one of these savings clauses in a labor contract situation and Justice Jackson, writing for the Court, approved the savings clause and he recognized the need for them and I would like to read one sentence which he wrote in reference to these validity clauses. He said, "The parties who could not foresee how some of the provisions of the statute would be interpreted proposed to go as far toward Union security as they are allowed to go and this is their right, but they proposed to go no further [267] and that is their duty."

We would submit to Your Honor that in this case the exact same thing happened. These parties proposed to go as far toward Union security as they had a right to go but they recognized that they had a duty not to step beyond that line and that is why they wrote the validity clause and that's why they agreed to meet and talk some more if the Court held any part of the contract invalid.

Now in our case, the Court has heard evidence which we submit establishes beyond any question of doubt that this labor contract is applied in the State of Texas. The Court is already aware of the disjunctive provision of law which states that if it is executed or applied here then the Texas law may control. We submit that it is applied here and

without rehashing two days of testimony we only have to recall the testi [268] mony of the Union president, Mr. Perrio. He tells us that once a week he goes to Mr. Knepper's office, they talk, they solve problems, and he says their bible is the labor contract. We submit that these transactions occurring in Beaumont, Jefferson County, Texas, affecting every member of this unit directly under the labor contract before Your Honor transcends all other transactions and brings it down into one principal point of contact between this plaintiff and these unions because at that particular stage the labor contract is being applied by both sides as Mr. Perrio said, it is to the best interest of the Union and he has often stated it is to the best interest of the company because they know that what they do at that meeting is going to be the law of the contract between the parties and wages, hours, overtime, vacations, scheduling, seniority, what they eat, what they do aboard ship, [269] and he knows the Court has been advised by these witnesses that Mr. Knepper's decisions flow back down the line of command. If he settled it in favor of the Union why Mr. Papich tells the Masters aboard the vessels and thereafter they administer the labor contract in keeping with that decision. If the rule is in favor of the company or if Mr. Knepper or Mr. Perrio makes a compromise ruling, then the matter is settled to the contrary and we do know that out of the 29 specific formal grievances all but four of them were settled right here in Beaumont, Jefferson County, Texas. Only four out of that particular group of twenty-nine had to be arbitrated.

Now for convenience of the parties they did that in New York City, but we do not think this is controlling because the decisions were made here and 25 out of 29 were so concluded in beaumont. We do not think that this [270] grievance procedure is controlling and standing alone because there is a lot of independent evidence before Your Honor to show this contract receives its application in the State of Texas, but that each of these points which we will note in

passing is enough standing alone to support findings of this Court that this labor contract is being applied in Texas, every day of the year it is being applied here. For instance, the proof shows that all employees of the plaintiff are in Texas frequently and repetitively.

Mr. Sanhereza said he has been doing it for fifteen years. Moreover, the President of the Union, Mr. Perrio, is a Texas citizen. He has got a business office in Beaumont, Texas, where he was served by the Marshal in this case. Mr. Weeks is the Vice President of the Union, and he is a citizen of San Augustine, Texas. The proof shows without dispute that sixty [271] percent of the new employees hired in the last two years were hired in Beaumont, Texas. The point of hiring I would like to discuss, if I could digress a moment and advise the Court of one very recent decision made by government agency on this point of hiring. On March 30th, 1972, the NLRB trial examiner in Houston, Texas issued a decision in a labor case involving a seafaring International Union. The SIU had a strict rule that you have to belong to the Union or you can't get a job aboard a ship. They have a hiring hall in Houston, Texas, they have got them all over the country, and in this particular case a seaman not a member of the Union was denied employment repeatedly aboard a ship so he filed a charge to the NLRB. The NLRB trial examiner held that it was an unfair labor practice for the Union to deny him employment on this ship and in the [272] course of writing his opinion he had occasion to make this statement concerning Texas law: "Although in certain states it is lawful to require maintenance of Union membership or payment of equivalent dues or charges by employees within a fixed period of time after entering employment, through express provisions to that effect in a collective agreement this would not be true in a so-called right-to-work state such as Texas, where under no circumstances may the requirement of Union membership or non-membership be made a condition of the employment or continued employment."

I would advise the Court that that case went on to talk about the fact that there were hundreds of labor contracts involving the SIU members. They declared this practice illegal, it is of no moment to the National Labor Relations Board that this is a seafaring employee, and once [273] he gets outside the ten-mile limit he may be on the high seas. The important thing to these Government people that look at this is that the point of contact, the hiring point was in the State of Texas. I would advise the Court that that case is on appeal to the NLRB. I would further advise that I have spoken with the chief Government lawyer in Houston about that case and he says the Union is complaining about the way they posted the notice to give this effect of this ruling to the membership and, for what it may be worth to Your Honor, he tells me that the substantive rule as to the point of contact is long-standing with the NLRB, and he recognizes and appreciates thought that that might be threatened on appeal. In any event, the point of it is, the point where a man is hired is recognized to be an important factor and in this particular case sixty percent of those people [274] are hired in Beaumont, Texas.

Now in addition to the proof, the proof shows that all of the terminations for cause have to be appealed to Beaumont, Texas, and that there is a right to appeal every one of them. So again, I think that this shows application of the labor contract within the State of Texas and nowhere else. The Texas unemployment insurance covers one hundred percent of these employees. There is no exception to that, regardless of what address he might turn in on a company record. The evidence shows that the employer's business headquarters is located in Beaumont, Texas, and I use the term employer, Your Honor, because Mr. Dixie repeatedly talked about this mammoth New York corporation known as Mobil Oil, but Mobil Oil also owns the refinery here and it owns hundreds of facilities all over the United States [275] and all over the world

and I venture to say that there must be hundreds of labor contracts, but in the labor contract at bar the employer is defined as the Gulf Coast, East Coast operations, a subdivision operating entity of Mobil, and, therefore, that organization's headquarters are in Beaumont, that what they may do for some of these meetings, like go to New York or elsewhere, is a mutual acquiesence of the parties, not required by their contract.

The Court has heard evidence that literally millions of dollars change hands under this labor contract. Millions of dollars in vacation checks and allotments is disbursed from Texas. The vacation checks all come from Beaumont, and the allotment checks all come from Dallas. In addition, the Court has heard that there is over a million dollars in United States [276] income tax on these payments that is computed in Texas, and paid to the Government in Texas, and I think it is a reasonable inference to state that any dispute or adjustment or any question arising there would likewise be handled in Texas, where the money is handled. The Court has heard testimony about certain unfair labor practice cases filed in Houston, Texas, by Mr. Chris Dixie's law firm, of two or three years ago. This is in evidence and it relates to a joint claim of some half a dozen or more employees asserting that the company has wrongfully acted in regard to their vacation benefits. If it please the Court, we would show that these New York NLRB proceedings that Mr. Dixie spoke of concerns either the elections among the employees whether they wanted a Union or the change of names of the Unions a few years later and both of those are non- [277] controversial matters before the labor board in the sense that the parties are not at each other's throat. You turn from that and you find that when the Union has a complaint about the way the company is treating its employees and they want to take them to court but the only time they have done that was two years ago or whatever date is on that, 1969, and they did it in Houston, Texas, in the 23rd region of the NLRB. We think

that this is evidence supporting our contention that this labor contract is in fact applied within the State of Texas. I might digress one more time and say that this NLRB proceedings and the other ones to which I referred in no sense is a statement to this Court that the NLRB has any type of exclusive jurisdiction in this case and the Court has already squarely ruled on that about six months ago when the defendants asked that this case be dismissed as coming within the [278] jurisdiction of the NLRB. At that time we submitted to this Court memorandum of authorities which quotes the United States Supreme Court cases establishing without any shred of doubt that this Court has full concurrent jurisdiction to decide this case. This is the United States Supreme Court and not any other court which has made this statement.

The labor contract also was shown, was actually signed in Texas for the purpose of putting it in force among the employees. I don't want to repeat all that for the Court, I suffice it to say that they give it some attention here, they went through this later transaction of typing it up and correcting it and signing it and I think that is evidence that they intended to apply it in the State of Texas.

Another important factor, without any controversy, is a matter of dues check-off. The proof shows that all [279] of the dues check-offs take place in Beaumont, Texas on a form agreed to by the Union in writing, addressed to this company, this employer at Beaumont, Texas. They are computed here, the amount is then sent to Dallas to get the money from a particular organization there that disburses some of the payments and from there it goes to Mr. Sanhereza up in New York, and he testified that when there is an error he adjusts it in Beaumont, Texas, through the mail, on the phone, but this is where he comes to get the extra money if it is short. This is without any controversy. The proof also shows that this employer has been physically located with its headquarters

in Beaumont, Texas for ten years. This is nothing that happened in any fashion connected with this lawsuit. The proof shows without any dispute [280] that the budgeting operation is conducted in Beaumont by various employees working for Mr. Knepper. The payroll, all the payroll records are here in Beaumont, and are administered here. All the personnel records on the individual employees are kept here, no matter where they may live. The orders to the Masters of the ships originate in Beaumont, and Captain Papich carries out the instructions of Mr. Knepper and relays that to the ship's Master.

The proof shows that the newspaper which is read by all of the employees and put out by the company entitled "Mobil Mariner," is actually printed in Beaumont, Texas, and distributed from Beaumont, and written in Beaumont. The employees booklet entitled "Welcome Aboard," which tells them a little bit about ship life, was written in Beaumont, Texas, is printed here and is distributed to them from Beau- [281] mont, and inside that book it tells the man that while you are our employee your address will be Beaumont, Texas. We, therefore, submit to Your Honor that the combination of these circumstances certainly establishes that the labor contract is administered in Texas and, as I have mentioned, we are convinced that anyone or two of these circumstances would be enough standing alone to demonstrate that this labor contract is administered in the State of Texas. It doesn't require all I have mentioned here, twenty odd things. It doesn't require that. Once you show that this is where most of the people are hired and where all of them have to be fired if they are fired and there is a final decision made, once you show that their money is coming from any place they could go anywhere to talk about this, so we submit to Your Honor that this contract does [282] receive its application in the State of Texas.

In conclusion, I would urge the Court that we think we

have proved enough to have this clause deleted from the labor contract. However, if the Court is not persuaded that we are correct on that point then we submit that certainly we have proven enough to show that the cause should be held to be of no force and effect as to residents of the State of Texas.

Our complaint contains a prayer for general relief and in such alternative relief as the Court may deem proper.

Thank you, Your Honor.

THE COURT: Mr. Dixie?

CLOSING ARGUMENTS

By Mr. Dixie:

If the Court please, this is a very important case to organized labor because it does concern money, the [283] purse string, and the question of Union security. These great working conditions of which we are very proud come from the fact that the Unions have money to bargain and to administer contracts and to exhibit strength to the employer. So that is the importance of the case. I thought very seriously of asking this Court to go all the way to decide what is and what is not legal under the picture that you have before you and to draw the line, but I come to the conclusion that that was not very wise for two reasons. One of them is that I don't believe Your Honor can carve with sufficient care and accuracy on this fact situation because you don't have enough evidence before you to decide who should and who should not be subject to the Union security clause.

The second reason I came to the conclusion not to ask the Court to go [284] all the way is the fact that the contract is about to run out and the matter will be moot and unless the declaratory judgment is used in improper ways it will be a futile exercise here for this Court to undertake

to render a final definitive judgment that means something. In this connection, I refer the Court to a labor case, "General Electric Company. *v.* International Union of Electrical Workers, 395 Fed. 2d 891." A suit to test the validity of the labor contract. The trial court ruled and on appeal during the appeal the contract expired, whereupon the Court of Appeals remanded the case to the District Court with the instructions to dismiss the cause, it had become moot. Declaratory judgment, a peculiar animal, it is about twenty-five years old and it has some excellent uses and it also has some potential misuses, and [285] it would be a misuse of declaratory judgment if the plaintiffs in this case is hoping to get some kind of a ruling from this Court, in this case which will control or affect the bargaining for a new contract which is now going on and here I must digress to say to Your Honor that it has been my experience in these labor cases that they are sometimes something behind the actual litigation which the Court sees. We have here in this case, apparently, a company and a Union that get along pretty well. They have been doing business since 1942. I think they have had a strike in 1969, but they settled it. The contract provides nice wages and working conditions, they settled their grievances very nicely, according to the testimony, and yet we have here a situation in which the company's principal witness testified that at [286] no time before this trial did the parties discuss anything except the total invalidity of the contract. At no time did the parties discuss the possibility of making the Union security clause effective only as to members and at no time was there any discussion at the bargaining table between the parties to find some other alternative.

Now what does that tell the Court as to what the plaintiff probably hopes to accomplish here? The plaintiff probably hopes to accomplish a ruling from the Court that will have the effect on the bargaining of the next contract and that I will say for both parties, including my client, is a very

poor way to do business. These parties should have discussed and tried to work out this problem before other than the company's contention that the clause is completely [287] invalid as to everybody. Now that is the only actual dispute that ever existed before we got here. You have got here a contract that is about to expire. Nobody has been fired under it, there has been no request that anybody be fired under it. Mobil has no liability of any kind or character and one would think under these circumstances that there is very little that Humble—I mean that Mobil can hope to accomplish other than the possibility of controlling the future bargaining. Well, on this point I know the Court knows, and I am going to discuss it fully as much as the Court will permit, that it is not within the jurisdiction of any court to prescribe what should be bargained at the bargaining table. Maybe what is bargained at the bargaining table is illegal and the Court can strike it down but I don't believe the Court [288] wishes to go into the bargaining room to try to control what the parties may do.

Mr. Hambright: May it please the Court, I ask forgiveness for this interruption but Mr. Dixie, for the fifth time, has attacked the motive of these parties in a manner not supported by the evidence and while I realize that this is not a jury trial, I do wish the Court to note that our objection for his continual reference to these, what he claims are improper motives and that we are trying to get this Court to do something improper because of some motive to take some unfair advantage of it, this is not in evidence before the Court, we disclaim it one hundred percent.

The Court: The objection will be overruled. The Court will comment that I don't think Mr. Dixie is intending to reflect upon the motives of [289] the defendant other than to show advocacy which certainly he is entitled to demonstrate and resort to as much as he thinks is necessary or

is fitting. I would also point out that counsel has a right to make a response and you may then make a response, even assuming that was the motive of the defendant to control the future negotiations I am not too sure that you don't have a right to do that, but that in itself is not advocacy so the Court is not so naive as to not be able to say they are future considerations that counsel has in mind. I am sure that the plaintiffs, the defendant would like to delay the matter for the very reason that the plaintiffs would like to accelerate the matter.

All right, I don't think there is anything for anybody to get excited about is what the Court is really trying to say.

[290] By Mr. Dixie: We do business with a local oil company and we get along pretty good and I don't intend for counsel—

The Court: I think that is pretty obvious and perhaps the Court wonders why the matter has risen in the first place, but go ahead.

By Mr. Dixie: I say and I said in the beginning that I don't feel that the Court can carve on this case with a sharp enough knife to do a satisfactory job for the parties and this is because both in the field of collective bargaining, at the bargaining table and before the National Labor Relations Board, Your Honor, we are accustomed to real sharp pencils and very, very delicate, nice adjustments to settle the differences between the parties and get a contract and get industrial peace and everybody go on and make money.

[291] The Court: You might give the Court an illustration of what would be an example of the proper niceties or minuteness in the way of decision in this case. I would be interested in having counsel's opinion.

Mr. Dixie: All right, let me go first to another view, I mean another area. You might be aware, Your Honor, that out of these plants it is very customary for bargaining unit

employees to promote up and work as temporary foremen and the question arose what is the status of a man that works part time as a foreman and part time as a bargaining agreement employee, and that was a very important distinction because a bargaining unit employee is entitled to the protection of the act but the supervisor is not. Well, the Labor Board wrestled with that question for a few years and they came down with a ruling that if a man works [292] one day a week he is a supervisor that week and if he works less than that he is not. Now that is what I call a real class adjustment by an agency created by Congress to settle some of these problems.

The Court: A decision of that type, is that beneficial to both the Union and the company?

Mr. Dixie: Certainly, Your Honor, that type of ruling clarifies the situation, it lets everybody know where he stands and while the Union would like to have the supervisors in the Union, why it can't and at least it knows that the one day a week don't ask that man not to cross the picket line and if it is less than one day a week you are entitled to speak for him.

The Court: As a matter of information, how did it help the parties for the National Labor Relations [293] Board to delay in making the decision?

Mr. Dixie: I don't think the Board delayed that decision.

The Court: I thought you told me after several years of deliberating.

Mr. Dixie: No, I didn't mean to say that. They probably had a case or two wrestling with the problem before they came out with a conclusion that satisfied them. I don't think there was any unusual delay.

The Court: The only criticism that the Court would have would be—it wouldn't be criticism, it would be more observation, of the National Labor Relations Board, that is

pretty slow, pretty dilatory in their operations and procedures.

Mr. Dixie: Well, that may be but if that agency is there and as we will see that it has passed on several questions than this one differently from what they say, from what they are asking Your Honor to do, but the [294] point is you invited me to say what I think should be done if I were doing it, if I had my magic wand I would put these parties down and I would say to the Union, your offer of Union security will apply to everybody who works less than thirty percent of his time in the State of Texas and the employer would come back at you with ten percent of the time and maybe you can come up with some kind of a clause that is legal. That is just one approach that could be made that has not been made. That is the kind of approach that is the genius of collective bargaining and the genius of these expert labor agencies would not particularly have the fear of a federal court, especially where the parties haven't even talked about the subject yet and the first time it is coming up is defense counsel bringing it up on summation. That's the [295] type of thing that should have been handled at the bargaining table and should not be handled at the bargaining table without, respectfully submitting without the intervention of this Court, because your judgment will have no effect on the collective bargaining process I submit except in this case. Now I said I want to say this right now. I think we can dispose of this argument that people that the Union security clause should be invalidated in its entirety because the Beaumont operation is here and the grievances settled here and the thing is applied in Texas, because all we have to do is go to the United States Steel Corporation, which has headquarters in Pittsburgh, where they administer their contracts up there, and we will just say that the home office is here, the center of activity is here and we are going to sign a contract here in Pennsylvania and everybody in Texas has got [296] to belong to the Union whether they want to or not, so we have got a big steel mill over here

in Houston, three thousand men, and everybody would have to join whether he wanted to or not. I think it will help the Court to check each one of these suggestions by just turning it around. Would you be willing to force Texas employees into the Union if all of these operations were located in New York. Obviously you would not. I am here to suggest that the most logical test of what's legal or illegal is a question of where is the work first born, and I think that's where the labor board has postured itself pretty much in the cases that it has had occasions to consider. There is a case called Northland Greyhound, 80 NLRB No. 60, 23 NLRB 1074. It concerns bus drivers, Greyhound bus drivers. They go from state to state and in one respect they are similar to these people who go from [297] port to port. That case, the Board had to decide at what state it would and what state it would not hold Union shop elections and who would vote, and I would like to briefly quote from the opinion of the Board: "The employer in the instant case is directly engaged in the field of transportation and the nature of its operation is such that some of its employees, particularly its drivers, continually travel between states which either permit without prescription regularly or prohibit Union shop agreements. It, therefore, becomes necessary to determine initially which state law is applicable and then in view of the language of 14b whether the particular state law or the national law is prominent. In resolving the question as to the applicable state law such factors as the residency of the employees, the places where they were hired, their headquarters, the [298] proportions of working time spent in the various states and with regard to the drivers there might have been given consideration in view of all the circumstances involved we are persuaded that the headquarters of the employees provides the best criteria because they represent the local point of the employment relation. The headquarters or where the employees report to work, receive their instructions and are paid their salaries. It is, therefore, in the states which they have their

headquarters that the provisions of any agreement between the men and the employer regarding the employees involved will be effectuated.

In view of the fact that most essential matters with respect to the employment relationship will be dealt with in the state where the employees have their headquarters, we believe that that application of this test could determine which state law shall control [299] will result in the least amount of extra-territorial effect being given to the laws of one state as against those of another." So, under the circumstances of those bus drivers the labor board disregarded residence in place of employment and all these things where the contract was administered and selected headquarters, that is where the man reported to work where he got his instructions and where he got his pay. All right, that is on that case. There was a later case called Western Electric, 84 NLRB 1019. In that case Western Electric had a group of installation workers that it would send around the country to work while in one state, while in another state, the head office of the company was in New York. The Union said it was in New York, let's make it applicable to everybody because it is a New York contract, the Board said no. The [300] Board rejected exactly what they are claiming in this case. They want the Beaumont office to control everything but the Board has refused that. In that case the Board adopted the job site test. That is, each employee is considered to be subject to the law of the state where he reports to work, receives his instructions and his pay, his wages. Now no doubt other variations will arise, depending on the fact situation. This is the only case that I know of, Your Honor, where such a predominant amount of time was spent on the high seas where the work is performed, where no state law applies, and I believe from my standpoint that this fact situation must be the best one that will ever arise from the Union standpoint to litigate it to a conclusion as to just what should be because I really think unless we are imbued with a policy of the right-to-work law, unless we

are unduly weighed [301] by that, that the evidence shows as it does here the twenty percent or less of the hiring of these employees is actually spent in Texas, and all that on ship board, not any of it on Texas soil, I think the chances are fairly decent that the Court will finally hold that under the circumstances of this case we hold that Texas law does not apply to everybody. But, in any case, the resident requirement to which the defendant, the plaintiff has run during the trial, is a test that has been rejected by the Labor Boards and has not been adopted by anyone else that I know of.

I know that I impose on the Court, the time is getting lengthy, but I ask your indulgence.

The declaratory judgment Act was amended in 1948 to add the word "may," m-a-y. The statute now reads that the Court may declare the rights of parties and the legislative history [302] shows that the Congress deliberately intended to make it discretionary, deliberately intended to make it discretionary with the Court whether or not to render declaratory judgment in any particular case. That history is set out in volumes 6a of Moore on Federal Procedure, Par. 5708.

One basis where the Court had declined to render a declaratory judgment is where declaratory relief will not settle the whole controversy. It would certainly be futile for this Court to say I find that it is illegal in whole or illegal in part, illegal in part and legal in part, and I find that much and I will let it go. I think it would be improper for the Court to make any judgment which might affect the future negotiations of the parties and so the real controversy is not going to be settled by this litigation. Plaintiffs are trying [303] to extract an opinion in a hard case, for some reason they do not seem to want to go to the Labor Board. Now with all due respect to my distinguished colleagues here, Mr. Nixon has been in office four years and he has appointed a majority of the Labor Board and the

general counsel, and I assure Your Honor the Labor Board is not coddling any Unions this year and I assure the Court that they are giving us rigorous, strict application of the law. Our rights are not one inch more and Mobil's rights will be fully protected in that litigation.

Now I would like to ask if I may go to the blackboard for a moment.

The Court: Yes.

Mr. Dixie: Congress has given us a patchwork, this Court knows the pre-emption doctrine, I know, as well as any Court, because you are located down here where many industrial disputes are. Here we go in the passage [304] of time from negotiations to the execution of a contract to the discharge of an employee. We will say that the execution takes place here, execution of contract.

Now if the Union strikes or bargains for an unlawful security clause, that is a federal case. Its only remedy is for the Mobil Oil to file charges before the Labor Board and the Labor Board will issue a complaint and they will come to this Court and they will get an injunction against the striker for the demand, this Court will not decide the merits of the case, you will only issue an injunction as you have many times to preserve the status quo and keep down the dispute until the Labor Board decides the case. But the Labor Board is the only one that can decide the case. If the Union wins the case before the Labor Board this Court can do no more. So this is pre-empted. But let us say [305] the contract is signed and we go on down here and Joe Blow is coerced, he is coerced because the contract says on its face that it is a Union shop and he doesn't want to join and he is being intimidated in his rights not to join the Union. That charge is exclusively for the Labor Board, not for this Court. Suppose the Union gets the man fired, that charge is exclusively for the Labor Board. So here and here the underlying question in this case must be decided by

the National Labor Relations Board and not by any Court. The only place that the Supreme Court has left open is this right here, Shimmer-Horn (sic) Decision and they left that open not for the benefit of the Federal Court but in deference to the State Court. I will read one sentence of the Shimmer-Horn (sic) case, the Shimmer-Horn (sic) opinion. "As a result of 14b," that is our section here, "there will arise a wide [306] variety of situations preventing problems of the accommodation of federal—of state and federal jurisdiction and the Union security field as noted in Alboma Plywood upheld the right of the state to reinstate with back pay an employee discharged in violation of a state security law. On the other hand, picketing in order to get an employer to execute an agreement to hire all Union labor in violation of a State Union security statute lies exclusively in the federal domain because only with the actual negotiation and execution the type of agreement described by 14b state power begins. State power recognized by 14b begins only with the actual negotiations and execution of the type of agreement which is prohibited. So, counsel in this case cited this morning a ruling by the general counsel that the Union demanded an illegal [307] security clause in a state where it was prohibited. So the general counsel issued a complaint. That is this pre-empted difference right here, and the same thing happened when these parties get up and go to New York tomorrow. If this Union makes one illegal demand on this Union security business all that Mobil Oil has to do is go right down to the Labor Board and file on them and then the agency charged by Congress with the responsibility of making these decisions will make and render a full protection to Mobil, while at the same time rendering a careful decision to the individual facts of this case. Under these circumstances is it too much for the defendant to suggest to Your Honor that the appropriate disposition of this case is to decline declaratory judgment in deference to the other proceedings that exist, especially since [308] this contract is about to run out anyhow. Now there is another point, a very much important point to this case. When you get a breach of contract in this case, in this Court under Section 301, the parties are here because it is a federal contract. It was sponsored and governed by federal law, so diversity of citizenship is not necessary. This Court would have no jurisdiction of a federal labor contract if it were not of Section 301 in the federal question. If that section wasn't there the Court would have to have diversity to hear the case and then you would have to decide it according to state law. But the Section 301 case is decided according to federal law. It is under that doctrine that Your Honor's jurisdiction arises. But let's stop to think. Are you here to decide a question of federal law or are you here to decide under the Shimmer-Horn the [309] peculiarities of the application of the Texas Right-to-Work Law.

I think it is the latter, and here they ask the Court to go further than the Texas Supreme Court has gone. Here is the Supreme Court of Texas in the Marmin (sic) case, I think it is a 1968 case, Judge Norvall, I haven't found Judge Norvall wrong many times. I think he may be one of the best judges that ever sat on the Texas Supreme Court, upon my word. In that case Texas residents rented an airplane in Texas from a Texas corporation to take a round-trip to Colorado and return and while they were in Colorado the plane crashed and Judge Norvall held that the Texas Wrongful Death Statute does not apply to that situation. Well, my goodness, it is hard to imagine a relationship more steep in Texas, one can well imagine that the negligence that caused the airplane to fall occurred in Texas, [307] but the death occurred in Colorado. Now then, here is the first thing that Judge Norvall says. "Admittedly there are two questions involved, the extent of the legislative power and the extension of the legislature and in our opinion we respectfully ask this Court to not consider as a matter of Texas law how far the Texas legislation could go. Please consider how far the Texas legislature did go in this

case. Now what does Judge Norvall say about the second rule? "Unless the intention to have a statute operate beyond the limits of the state or country is clearly expressed or indicated by its language, purpose, subject matter or history, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country hat enacted it. To the contrary, the presumption is that the statute is intended to have no extra[311]territorial effect but to apply only within the territorial jurisdiction of the state or country enacting it and it is generally so construed.

Now then, the Texas Supreme Court stands squarely on the conservative view that Texas statutes are not to be construed to go outside the state to the maximum boundary that the state can go unless the statute shows that intention on its face. The presumption is the other way, that the legislature intended carefully to limit its laws to the territory of the state unless it indicates otherwise. Now that is a question of Texas law, that Your Honor is called upon here to decide, if a declaratory judgment action, you may have that power. The Court can probably say that since you have general jurisdiction under Section 301, you will have jurisdiction to answer that state law question too, [312] but Texas law, I mean Fifth Circuit law is that the fact that you have to decide an undecided state question is another reason why in the exercise of sound discretion declaratory judgment is not appropriate. That is because the Federal Courts should not make the first stab at deciding state law questions unless there is absolutely some reason for it. Another point that I want to urge to the Court is that this case is not really ripe for decision, both in the constitutional sense of a case in controversy and in the discretionary sense under the declaratory judgment statute. Now counsel poohpoohs that idea of the case of controversy but so far we are about to get an advisory opinion from the Court when the only arguments that took place between the parties was that the company wrote us a letter in April, in the spring of 1970, and [313] then just started disregarding the clause

and a year and a half later the Union wrote a letter to its members and the company picked it up and made a federal case out of it.

I think I am not too far out of line to say that that is a pretty weak question of a dispute that is mature enough to take into the Federal Court. I don't think it is a case of controversy, either in the constitutional sense or in the discretionary sense. Parties have to come to a real parting of the ways belly to belly in their dispute before they can come to court and ask for a declaratory judgment. After all, this is a remedy that is provided to supplement all other remedies and is designed to prevent accumulation of liability on the part of one side or the other and it is not to be used lightly with so little conflict and so [314] little damage to the plaintiff and in a bargaining relationship and the Labor Board protects the plaintiff, Mobil Oil, against any damage. I respectfully submit to the Court that in the exercise of sound discretion the case should be dismissed without prejudice. Of course, it would be without prejudice because they will have all of their rights to file on us before the Labor Board but if all of that is wrong then I have to assert my full right as a Texas citizen and speak firmly to this Court that if you have to apply some law you ought not apply Texas law at all. If you have to decide the case you ought not apply Texas law at all because only ten percent of the time of the people is actually spent working in the State of Texas and I think that with ninety percent of it is spent on the high seas and the rest of it in New York and other Union security states. [315] It is a little bit too much Texas pride to run the risk of our courts clear up to the Statue of Liberty in New York and declare that it is going to be defective for work performed up there, but what would the Court think if a Union came in here and tried to force people to join the Union when they have a residency in New York and say that doesn't apply to work in Texas. I don't think the Court would welcome that and I respectfully submit to Your Honor that in this important

case the better part of prudence will not harm the plaintiffs really, but it will relegate the parties first to the bargaining table and then to the Labor Board where they get the full answer to their questions. I thank the Court for your indulgence.

The Court: Mr. Hambright?

Mr. Hambright: Thank you, sir.

[316] **REBUTTAL ARGUMENT**

By Mr. Hambright: If it please the Court, I will make a very brief response to some of those points. Many of them have been disposed of by preliminary rulings of the Court on memorandum of authorities.

First, I would like maybe not in exact order to talk about the pre-emption of power that Mr. Dixie used the blackboard and attempted to state to this Court that this Court had a very narrow field in which it could probably act. We disagree with Mr. Dixie's statement on the law. We assert to the Court that Mr. Dixie is incorrect in his statement of the law. We ask the Court to consider the facts which I state now to be true, that many Unions and many employers have come into Federal Courts under Section 301 of the Taft- [317] Hartley Act seeking declaratory judgments as to what their rights are and it is firmly established that this is possible, this is a right they both have. I am looking at one case here, the first one is the Amalgamated Association of Street & Electric Railroad, railway coach employees, filed 1962, in the United States District Court in Nevada, affirmed by the Ninth Federal Circuit in 1963, where this very thing happened, and in that case the Union sought a declaratory judgment as to what the contract meant and whether part of it was invalid and the Court considered it and rendered a judgment which was affirmed by the Ninth Circuit.

The next one is Coastal West Coast Telephone Company

Union, International Brotherhood of Electrical Workers in 1970, where again there was a declaratory judgment, and in the [318] alternative they were seeking reformation of the labor contract and the Court entertained that and granted relief and in our case the Shimmer-Horn case, many other authorities firmly establish and I hope this Court will conclude that it does have full power and jurisdiction to act in this case without any question whatsoever and we are not here seeking reformation, but only declaratory judgment that a particular class is void. The contract itself provides that when a Court so holds the parties will get together and negotiate for I think a ten-day period or within ten days they will meet. It provides that right in the contract. So at the outset I would like to say without any further authorities on that point that there is no pre-emption whatsoever and that this Court has full power to act in this case. Now he mentioned this Texas case by Judge [319] Norvall in 1960, in regard to alleged extra-territorial effect. As I mentioned this morning, we do not think that case is appropo here because this employer is present within the State of Texas. The employees are presntly here on a continuing basis to some degree and all of the labor relations operations, the decisions of running a labor contract, as Mr. Perrio calls his bible, these decisions are conducted here and I won't go back through that again for Your Honor, but the point I am making is that the parties aren't in Colorado on an airplane, they are right here in Beaumont, Jefferson County, Texas, day after day, month after month. So this Court is not being asked to go into there and decide some new interpretation of the Texas law. I noted that Mr. Dixie did not take issue with the Attorney General of the State of Texas, of which he has [320] already surveyed the Texas Court holdings and told us that the agency's shop clause is invalid.

Mr. Dixie alluded to the fact that the Federal declaratory judgment act states that this Court may render a decision to decide this controversy. I would emphasize to the Court

that in this case the controversy arose when the Union sent out a threatening notice to all of the workers in which it said, and I quote: "We intend to exercise our right to have the employment terminated if you don't join." The Union did not say we may exercise our right, the Union said we intend to exercise our right and within one month, plus or minus, after this thing went out this case was filed, and the fact that they may not have caused anybody to be fired since that time may be explained by the fact, first, they got them all in the [321] Union anyhow, according to the testimony, with the exception of maybe a few new ones that haven't lived out there thirty-one days or some reasonable period. So that might explain why they haven't caused anybody to be fired. Another explanation is this suit has been pending continuously since this letter was issued, with the exception of maybe a month's time to get the case pleaded and filed. So, in any event, we do have a controversy here and we are under no doubt whatsoever that it is a genuine belly-to-belly controversy if that's what Mr. Dixie says is required, because the Union said we intend to exercise our right and the only reason they haven't is because the action has been pending since that time. But I do not accept the position of the Union, and I hope the Court does not accept it, that there is no controversy here. Had this action not been pre [322] sented there is no doubt we would have had many developments from that threatening notice.

Now Mr. Dixie referred to the Northland Greyhound case and the Westinghouse case that came right after it. Those cases were decided in 1948 and 1949 respectively. Those cases were decided by the NLRB under a federal statute which has been repealed by Congress. That statute was repealed twenty years ago. It provided for a special, unusual election-type proceedings to be conducted to see if the employees wanted a Union shop. Back in those days they let the people vote on this. The statute was complex,

no one knew what it meant, Congress repealed it over twenty years ago.

We submit that those cases are not important on the question of some type of test to determine the applicability of 14b of the Taft-Hartley [323] Act and in addition if we are going to look to the NLRB for a test we urge the Court to consider the one in March of 1972, right over here in Houston, where the NLRB trial examiner has ruled that seafaring employees are just as subject to this as anyone else and if they are hired in Houston, Texas, or go abroad they cannot be forced to join the Union, regardless of what they do ten miles out at sea. It is the point of contact with the employers that matters and in this particular case before the Board in Houston they didn't have this long-standing relationship of day-to-day business operations and contact between the parties like we have in Beaumont. This was a hiring hall deal where a man walked in and he says I want to go to sea and he is on a ship, and we submit to Your Honor that our case is infinitely stronger [324] than the case decided by the Board's trial examiner just two or three months ago in Houston. So to the extent we might look to the NLRB for guidance, we say that the NLRB would support fully the abolition of this agency's shop clause from this particular labor contract. Now Mr. Dixie said that there is no way that this Court can do anything that would affect the bargaining relationship except bad, something bad. Collective bargaining is a difficult matter. I cannot conceive of any way we can now, today, predict what course collective bargaining might take. I do know that the labor contract before this Court says if any clause in there is taken out by a Court the parties would get together within ten days to talk about it.

We have heard testimony from one of the witnesses for the plaintiff that the plaintiff was willing to talk [325] about it and will honor that contract commitment.

Mr. Dixie would have this Court to believe that the par-

ties have never talked about this matter except in terms of total invalidity. The proof shows that in January of 1970, Mr. Knepper had a meeting with at least three Union officials when they talked about the invalidity of this clause. The proof shows that there were other informal contracts with them again in April of 1970, the company finally wrote that letter to the Union for the stating that the clause was invalid and that they would use this voluntarily. The proof further shows that for over a year the Union raised no objection to this or at least so far as the record shows there was no occasion to do anything more because there has been no repudiation by the Union of this matter of treatment, and then in July, 1970 comes [326] this threatening letter. The Court knows the history thereafter.

Now Mr. Dixie has also stated that this Court cannot carve a decree. He thinks because this Court hasn't heard enough evidence. We submit to the Court that no carving is involved, no intricate maneuvers so involved. The Court says that this agency shop clause is invalid because of all of the evidence that is in this record. If the Court should so hold it has been stipulated in open Court that the other clause, the maintenance of membership clause stays in there as written, it says that once a man comes in the Union then certain things happen. The Union would have that. It would not require any intricate formula or anything else. On the other hand, if the Court is not persuaded that this contract is being applied in the State of Texas and is being [327] administered here, the Court is well warranted in finding that the agency shop clause is only applicable to Texas employees. I perceive no carving operation or anything else required there. It is the law of Texas, the Court has been advised and the Court has known of the law of Texas, the company is here present within the State of Texas, all of these incidents of employment took place here, and so again, I think that we are—that is, there are some shadows and some imaginary difficulties in regard to telling this Court

that it is not in a position to render a decree that is called for by this evidence.

So again, we are in disagreement with Mr. Dixie on that and upon that note of disagreement I will conclude our summation.

The Court: Gentlemen, I think [328] both sides have given the controversy that is the litigation, about all you can. I don't think either of you have left anything out. It may be, as Mr. Dixie says, that this matter could be better decided by the National Labor Relations Board, or it may be it is something that the State Court should have jurisdiction over, but the fact remains that the suit was filed in this court and the Court has jurisdiction and, of course, we need to keep it, make whatever decision we think should be made under the facts and circumstances and the law applicable.

It would be probably easier for the Court to take the line of least resistance and to say that this is really not a proper case for declaratory judgment action and that the action is being abused in this instance, especially in view of the time element mentioned, when the con [329] tract will expire and also the circumstances pertaining to the controversy. The thing that originated the controversy. It is a little difficult for the Court to see how the plaintiff can claim too much harm when the facts indicate that all of the employees involved are Union members or in the process of becoming Union members or have occupied a status which is satisfactory to the Union, and that would be a line of least resistance to take also. On the other hand, that is a two-bladed knife. If no one is dissatisfied about it the company should not be concerned because the employees apparently are happy being Union members. Or, giving effect to what Mr. Dixie referred to as security clause, I believe, the contract, and Mr. Hambright refers to as the agency shop clause, is that right?

[330] Mr. Hambright: Yes.

The Court: On the other hand, if the Union was satisfied what was the necessity of issuing a letter in the first place if all of them were becoming Union members or complying in accordance with their wishes, in accordance with the Union's wishes? What was the necessity of issuing the letter?

To engage in a little levity, Mr. Dixie, you say that the Court's jurisdiction in these matters is rather limited. I can only say I wish it was more limited than it is.

It seems to me that it is entirely too much hair-splitting and too much play on words and too much lack of real sincerity on the part of both parties in this labor-management problem and controversy. Too much to suit the Court. Maybe you need a Board like the National Labor Relations Board, and I cannot resist the tempta [331] tion to say that as far as I can tell it is a two-pronged sort of situation. If the Unions involved, they have a set of lawyers that seem to be favorable toward the Union. If management is involved the company seems to have a set of lawyers in favor of management, and it is a situation that is really, that really isn't healthy or beneficial to industry or to labor either, in the Court's opinion. I think there should be more sincerity in these matters. Now that's the way it appears to the Court. Maybe I am wrong about it. On the other hand, we would say to be completely facetious, if it was too clear-cut there wouldn't be any occasion for the lawyers to expound and demonstrate their techniques and their knowledge and their ability.

So it is a situation and we are called upon to make a decision. [332] We will make it as fairly and as honestly as we can make it. I will make further observations but I would like to say that I will give counsel until July the 10th to prepare proposed findings of facts and conclusions of law which you feel the Court should enter in this case. The mere fact that the Court has passed on preliminary matter,

on motions to dismiss, does not preclude counsel from further pursuing that request and it may be that the Court will decide that this is not a proper action for declaratory judgment. I don't feel that we will make this decision at this time, but I want to give the case more deliberation and more thought.

Now, it is obvious to the Court that while this contract will expire July 31, the principles set out in the contract will still be facing the parties [333] and if the Court's decision is of any benefit, I can see no reason why we should not make it.

Now obviously, if this was a Texas operation, a Texas contract, Texas performance, Texas law would apply. Now Mr. Dixie hasn't attacked that, and as Mr. Hambright has mentioned, he does not question the Attorney General's decision, that is, the Texas law pertaining to the right to work and this clause in the contract, would be invalid under the Texas law if there is no question about Texas law applying. This is a particularly difficult situation because we can't say without some reservation that Texas law applies to the entire operation. I think we would have to concede under the facts as we mentioned during the trial that this appears to be a New York negotiated contract and one that was con [334] summated in New York, with the exception of some formalities, but it does have a definite New York origin. On the other hand, all of the facts indicate that Texas is involved to a greater degree than any other state in the operation and application of the contract and the question is, is it involved sufficiently in the administration of the contract, the application of the contract, for the Texas law to apply.

I would certainly say that Texas legislature intended the Right-to-Work law to apply to residents of Texas, and it would appear to me that this contract then insofar as the residents of Texas are concerned, that it would be invalid and not have any effect; that is, that particular provision

of it pertaining to membership in the Union or dues to be paid, insofar as Texas residents are concerned. It might, if the factor of termination of [335] employment, the other involvement of the company, if it is sufficiently a Texas operation I can conceivably see how a Court could hold that the entire contract would be affected by Texas law. I am not too sure that it wouldn't be a sound decision and upheld, but it certainly would appear to me that if that was not the case that it should be upheld insofar as the Texas citizens are concerned.

Now these are just observations and they are not a definite ruling or decision on the part of the Court. Are there any questions?

Mr. Dixie: No questions.

Mr. Hambright: No, sir, Your Honor.

The Court: We will stand adjourned.

The Marshal: Everyone rise.

[336] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OFFICIAL REPORTER'S
CERTIFICATE

I, Jerry T. Bloxom, Official Court Reporter for the District Court of the United States for the Eastern District of Texas, do hereby certify that the above and foregoing 335 pages constitute a true, correct and complete transcript of the testimony and trial proceedings in the above-styled and numbered civil cause.

Witness my official signature in the City of Beaumont, Texas, on this, the 4th day of July, 1972.

JERRY T. BLOXOM
Official Court Reporter
United States District Court,
Eastern District of Texas.

FORM NLRB-501
(2-67)

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Form Approved
Budget Bureau No. 64-R001.13

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 23-CA-3440

Date Filed September 30, 1969

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Mobil Oil Corporation, Marine Transportation Department

b. Number of Workers Employed: Approx. 300

c. Address of Establishment (Street and number, city, State, and ZIP code): P.O. Box 3444, Beaumont, Texas

d. Employer Representative to Contact: John Knepper, Mgr.

e. Phone No.:

f. Type of Establishment (Factory, mine, wholesaler, etc.): Producer of petroleum products.

g. Identify Principal Product or Service: Petroleum products.

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about September 1, 1969, the above-named Employer has refused to grant vacation benefits to the following named employees because of said employees' membership in and/or activities on behalf of Socony Vacuum Tankermen's Association, Local 8-801, Oil, Chemical & Atomic Workers International Union, AFL-CIO, a labor organization: George Agasto, Robert Arnold, Joe Berrioya, George A. Cadawan, Joe Delaney, Wesley Ensign, Ferico Flores, Rudy Gonzales, David Goodrich, James Henry, Robert Kresky, Venus LeBeef, Billie LaBlanc, Bonnie Patterson, Paul Scitanko, Moses Siregar, James Wickman and James D. Williams.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
Socony Vacuum Tankermen's Association, Local 8-801, Oil Chemical & Atomic Workers International Union, AFL-Cio

4a. Address (Street and number, city, State, and ZIP code): Room 221, Goodhue Building, Beaumont, Texas 77701

4b. Telephone No.: 883-3853

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
Oil, Chemical & Atomic Workers International Union, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By DIXIE, WOLF & WATSON
James R. Watson, Jr.
(Signature of representative or person filing charge)

Attorney
(Title, if any)

Address 525 Scanlan Bldg., Houston, Tex. 223-4444
(Telephone number)

September 29, 1969
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, Section 1001)

UNLICENSED SEAMEN
Gulf-East Coast Operations

State of Residence	Number of Seamen as of June 23, 1972
Texas	123
New York	60
New Jersey	21
Florida	16
Louisiana	13
Maine	10
Rhode Island	10
16 other states and territories having 6 or less each	36
	289

Designated Shipping Port	Number of Seamen as of June 23, 1972
Beaumont, Texas	152
Providence, Rhode Island	30
New York, New York	107
	289

Grievances Presented at the Fifth Level to Gulf-East Coast Operations Management

Date of Grievance	Submitted by	Subject	Grievant	Date of Reply
2-10-72	Perrio	Aluminum pipe lines	Joe D. Wilson	3-23-72
2-10-72	Perrio	Aluminum pipe lines	S. M. Donovan	3-23-72
2-10-72	Perrio	Aluminum pipe lines	Thos. Langan	3-23-72
2-10-72	Perrio	Aluminum pipe lines	W. Hyman	3-23-72
3-12-72	Perrio	Seniority	J. Fair	3-23-72
3-17-72	Nason	Pay status	J. Smith	3-23-72
1-24-72	Weeks	Saturday Work	T. Nason	2- 7-72
12-29-71	Weeks	Sunday Work	P. Fitzgerald	1- 6-72
12- 4-71	Sanhueza	Handling Garbage	B. Zarbano	2- 7-72
11- 4-71 (letter)	Sanhueza	Tank Washing, Sunday	General	11-10-71
7- 2-71	Sanhueza	Sunday Work	Cecil Bell	9-29-71
7- 2-71	Sanhueza	Sunday Work	J. B. Delaney	9-29-71
7- 2-71	Sanhueza	Sunday Work	E. McWhinnie	9-29-71
12- 3-70	Sanhueza	Seniority	S. Paisalong	12-18-70
8-17-70	Perrio	TC for cleaning spill	G. McCarthy	12- 8-70
8-17-70	Perrio	TC for cleaning spill	B. Zurbano	12- 8-70
8-17-70	Perrio	TC for cleaning spill	F. Lazard	12- 8-70

Disbursements to Fleet Employees—1971
Gulf-East Coast Operations

Vacations—by check drawn by Gulf-East Coast Operations in Beaumont on First Security National Bank of Beaumont	$1,365,000.00
Cash supplied to Masters for disbursement on board ship, obtained from First Security National Bank of Beaumont	1,994,000.00
Allotments—checks drawn by Dallas Payroll Office at employees request	1,117,000.00
Federal Income Tax and Social Security deductions from employees' pay, transmitted to U.S. Government by Dallas Payroll Office	1,431,000.00
	$5,907,000.00
Sickness and Accident Payments and Standby Pay—vouchers issued in New York Office	$ 69,700.00

Ratio of Texas figure to New York figure approaches 99% to 1%.

Grievances Presented at the Fifth Level to Gulf-East Coast Operations Management

Date of Grievance	Submitted by	Subject	Grievant	Date of Reply
12- 7-70	Weeks	Shifting B. W. Machines	T. Nason	12- 8-70
11- 3-70	Perrio	Seniority	J. Fair	11-20-70
10- 8-70	Perrio	Room Allowance	U. Benz and 9 others	11-17-70
9-18-70	Perrio	Cleaning Chill Box	G. Phillips	9-28-70
9-17-70 (letter)	Fitzgerald	Sailing time	General	9-23-70
9-17-70 (letter)	Fitzgerald	Fire Fighting School	General	9-23-70
4-16-70	Sanhueza	Overtime-extra rooms	R. G. Marshall	5- 4-70
4-17-70	Sanhueza	Pay and Subsistence	T. Nason	4-28-70
2-26-70	Perrio	Butterworthing	U. Benz	3-13-70
2-27-70	Perrio	O.T.-Fire and Boat Drill	M. Persall and 13 others	3- 6-70
2-27-70	Perrio	Pay status	J. C. Fleniken	3- 6-70
2-13-70	Perrio	Shift of Ship	M. Persall and 7 others	3- 6-70

Technical Building, Beaumont Refinery (Gulf-East Coast Operations Headquarters), from the West.

WELCOME

Welcome to Mobil Oil Corporation's Marine Transportation Department and the Gulf-East Coast tanker fleet.

This booklet has been prepared to provide the new employee, who is going to sea for the first time, with information that will be of value to him when he joins his first vessel.

It will, also, provide valuable information to the new employee who has had previous sea service in other companies about personnel practices in Mobil.

Take time to read this booklet before you join your vessel. You will find the time well spent.

GULF-EAST COAST OPERATIONS

As a new employee there are certain things you should know about Mobil Oil Corporation and the Gulf-East Coast tanker fleet. Mobil's Marine Transportation Department is responsible for the movement of petroleum products (cargo) on oceans and inland waterways throughout the world.

This worldwide movement of petroleum products provides employment for people of all nationalities, colors, and creeds on board ships under the flags of several countries and in offices in cities all over the world.

You are concerned primarily with employment aboard American Flag ocean-going tankers operated by Gulf-East Coast Operations, a part of the United States Operations Division of Mobil's Marine Transportation Department.

Gulf-East Coast Operations has its main offices in the Mobil Oil Refinery in Beaumont, Texas. Two other offices are also maintained: one, in Mobil's Headquarters at 150 East 42nd Street, New York City, and the other at the Mobil Refinery in Paulsboro, New Jersey.

REPORTING ABOARD FOR THE FIRST TIME

Many of our new employees are making their first trip to sea. They may never have been aboard a ship of any kind. If you *are* one of these, you will find the following helpful.

When you first step aboard the ship from the gangway, you will probably be met by one of the officers or a member of the crew who will ask, "Are you the new messman (or wiper or ordinary seaman)?" From there, you will be directed or conducted through the process of meeting your supervisor, locating your room, signing on the ship's articles and starting to work.

If there is no one at the gangway when you come aboard, look around the deck and you will find someone to help you. There will always be a deck officer and three seamen on duty. Any of them will be glad to direct you.

It is a good idea to tell your first contact on board that this is your first trip to sea. He will take pains to see that you are properly directed, and if he is not busy with an essential activity at the moment he may escort you to meet your supervisor.

If you are reporting as Ordinary Seaman, your immediate supervisor will be the Boatswain (pronounced Bos'un). If you are a Wiper, your supervisor will be the First Assistant Engineer, and if you are a Messman you report to the Steward.

Your supervisor may not be able to devote full time to you immediately because of the press of duties in connection with docking, or other of the numerous activities required on a ship which has just arrived in port. If this is the case, make yourself comfortable in the crew's messroom with a cup of coffee until he is free to give full time to your indoctrination.

ORGANIZATION

Merchant ship officers are the men who have licenses issued to them after passing an examination before a United State Coast Guard examining officer. You do not salute officers nor do you follow military procedures on merchant ships. Merchant officers are in charge of the men working under them on the ship. They are the supervisory group with the skill and experience to keep the ship operating as a carrier of petroleum products.

The Captain is the officer in full command of the vessel. Reporting to him directly are: the Chief Mate for the deck department; the Chief Engineer for the engine department; the Radio Officer for communications and clerical work; and the Steward for the steward's department.

As a new employee you will be working in one of the following jobs:

As an ordinary seaman in the deck department; or,

As a wiper in the engine department; or,

As a messman in the steward's department.

These jobs are called "entry" ratings because you do not need any experience on a ship to work in these jobs.

There are in addition to the Captain and Chief Engineer at least three deck officers and three engine officers and one radio officer on each ship.

In the deck department there is an unlicensed man called a Bos'un who directs the work force in getting the work done that the Chief Mate has laid out. There are also six able bodied seamen and three ordinary seamen. The able bodied seamen called "AB's" and the ordinary seamen called "Ordinaries" are divided into three groups. These groups are called "watches" and there are two "AB's" and one "Ordinary" on each "watch." A "watch" is a working period of four hours. Watches start at midnight with the "12 to 4 watch" followed by the "4 to 8

watch" and then the "8 to 12 watch." At noon the watches start all over again with the men on the "12 to 4 watch" starting back to work. You can see from this that if you are assigned as an "Ordinary" you will be given a "watch" to stand. This is called "watchstanding" and you will be known as a "watchstander." You will "stand watch" for four hours and be "off watch" for eight hours. This routine goes on every day you are on the ship. During the daylight hours of your watch between 6 a.m. and 5 p.m. you will work on deck under the direction of the Bos'un. You may be painting, or preparing some part of the ship to be painted, or cleaning out tanks for the next cargo, or any other work that may be assigned to you. Between 5 p.m. and 6 a.m. you generally will not be doing the same work as you do during the day. During the night watch you will take your orders from the officer in charge of your watch rather than the Bos'un.

The Chief Engineer is in charge of the engine room and all machinery throughout the vessel. There are three engineer officers, each one in charge of a "watch." There is one oiler standing watch with each engineer officer. The First Assistant Engineer lays out the work for the engine room. There is a pumpman who handles the pumps for loading or discharging cargo and works on repairing ship's machinery. Some ships carry a machinist to help make rapairs to ship's machinery.

If you are assigned to a ship as a wiper you will work in the engine room and about the ship helping the engineers, oilers, pumpman or machinists in their work. You may also do general cleaning work or painting in the engine room.

Wipers are known as "dayworkers" because of their regular working hours are from 8 a.m. to 5 p.m. Monday through Saturday. They do not stand watches. Wipers generally are not required to work on Sunday.

The steward's department handles the cooking and

serving of meals and the cleaning of officers' rooms and other areas of the ship. The Steward is in charge of this department. There is a Chief Cook who handles the cooking. A Second Cook does the baking and helps the Chief Cook. A galleyman works in the kitchen, which is called a "galley," cleaning vegetables and pots and pans and helping the cooks prepare meals. There are two messmen. One serves meals in the Officers' dining room and the other serves meals in the crew's dining room. Dining rooms are called "messrooms." Messmen also set tables and wash and put away the dishes after the meals. They do general cleanup work in connection with the messrooms. There is also a utilityman in the steward's department. The utilityman does the general cleaning of the officers' quarters.

If you are assigned as a messman you may be given a job as either officers' messman, crew messman, or utilityman when you join the ship. You will work eight hours every day between 6:15 a.m. and 6:15 p.m. The Steward will set your hours so that you will generally only work eight hours during this twelve-hour period.

PERSONAL EQUIPMENT

You must bring your clothing with you. You should bring dress clothes for going ashore in port and work clothes for working and living on board the vessel.

Most seamen wear khakis or dungarees. Take at least three sets of work clothes with you. Normally you cannot buy clothing on board.

There is a washing machine on each ship for the crew to use. Washing power is supplied free of charge.

In some ports dress shirts or suits can be sent ashore for cleaning and are returned before sailing time. Ask the Steward if personal laundry will be sent ashore before you get to port. You must repay the Steward for the cost of any laundry or cleaning which you give him to be done ashore.

If you are being assigned as an ordinary seaman, make sure you have rain clothes with you. Deck department men seem to prefer rain suits. This is because they are outside in the weather a good bit of their working day. Messmen and wipers, because they generally work inside, can use regular raincoats.

Take good work shoes, preferably safety shoes. Sneakers, loafers, or run down dress shoes are not safe foot gear for use on ships.

Choose the clothing you bring with weather in mind. Remember it can be 70° leaving Beaumont in December and three days later be below freezing as you head north to a discharge port on the East Coast.

You will be supplied face soap, industrial soap, bed linens, towels, and matches. Shaving equipment, tooth paste and brushes must be brought with you.

You will sometimes have to travel to a distant port to join a vessel. ALWAYS carry your seamen's papers including Merchant Mariners Document, license, (if an officer), and International Certificate of Vaccination on your person. Do not pack these documents in your luggage because luggage sometimes goes astray. You can make emergency arrangements for clothes but you cannot sign-on without your seamen's papers.

MAIL

Mail is forwarded to each port in advance of the arrival of the ship. Your mailing address is:

John Doe
S/S "Name of Ship"
Mobil Oil Corporation
Gulf-East Coast Operations
P. O. Box 3444
Beaumont, Texas 77704

There are other addresses which may be used from time to time for different ports. You will learn these while you are on the ship. Your official mailing address, however, is the one given above.

Every vessel has a radio station on board. You can send a radiogram from the vessel. Also, your family can send one to you. This can be done through Western Union; giving them your name, the vessel's name and general location, for example: due New York in 2 days. Radiograms are for your own expense and are usually sent only in matters of urgent personal necessity.

TELLING TIME

You may be confused at first by the way seamen tell time on a ship. In fact, it is an easy system to learn. The day starts and ends at midnight.

At the start of the day midnight is called "zero hours" and is written 0000. Each hour after midnight is called by its value in hundreds, One a.m. is "oh-one hundred" (0100). Two a.m. is "oh-two hundred" (0200). Three a.m. is "oh-three hundred" (0300). This continues on through "oh-nine hundred (0900) or 9 a.m. At 10 a.m. the "oh" is dropped and hours then start being called "ten hundred," "eleven hundred" and "twelve hundred." At noon or "twelve hundred" you just keep going on with the count up to midnight which at the end of the day is called "twenty-four hundred" (2400). As you can see 1 p.m. is "thirteen hundred" (1300); 1:30 p.m. is 1330; 2 p.m. is "fourteen hundred" (1400); 2:15 p.m. is 1415, etc.

PAY DAY

The monthly wage rate set out in the Labor Agreement is divided by thirty days to arrive at a daily wage rate. You get paid this rate for each day you are on the payroll.

If you are on a ship that is in the coastwise trade, which

means sailing between a Gulf Coast port and an East Coast port, you will be paid in full at the end of two round trips, usually 24 to 26 days. The Captain will give you your money and you will sign the pay receipt for it. This is called "pay off" rather than "pay day."

Between "pay off" days you will be asked by your supervisor before you reach port if you want a "draw" in port. A "draw" is a pay advance against wages you HAVE EARNED, and is generally given where you have five or more days between ports. You do not have to make a "draw" if you don't want to. You can draw as little as five dollars. All amounts are subject to any withholding amounts which must be deducted from your pay. "Draws" are usually made arriving in a southern port and one northern port. "Pay off" is usually made in a northern port. You will become familiar with coastwise "draws" and "pay off" practices very quickly.

If you are joining a vessel which is making a foreign voyage you will sign Articles of Agreement before a U.S. Shipping Commissioner. The Commissioner will be on the vessel to sign you on and he will ask you if you want an "allotment." An "allotment" is part of your pay which will be sent to certain members of your family or a bank account either semi-monthly or monthly. The Commissioner will tell you how much you can "allot" and to whom you can "allot" it.

On Coastwise Articles you can have money sent home by means of a "draw check" which is like an allotment. Your supervisor can tell you about "draw checks."

When you go on vacation the personnel office will send you a check for your earned vacation.

If you should leave a ship without being paid off the Master mails your wage/overtime statement to the Dallas Accounting office. That office draws a check and mails it to the Beaumont Personnel office for forwarding to you—

this all takes time so don't expect to receive "unclaimed wages" until after several days have passed.

PORT TIME

A tanker stays in port only long enough to load or discharge its cargo. This usually takes sixteen to eighteen hours. In most ports you are free to go ashore only when you are not working. A "sailing board" will be next to the gangway where you leave the ship. It will have the "sailing time" written on it. The "sailing time" is the hour when the ship is to leave the dock or anchorage. Make sure you are back on board the ship before this time. Don't plan to come on board at the last minute. The ship may sail without you.

In some ports your vessel may go to an anchorage to await tide or for "lightening up." Going ashore may be restricted because of insufficient time. In any case, your supervisor can apprise you of all matters pertaining to going ashore.

Some men make agreements for one of them to stay on board and do the work of another man who goes ashore. This is called "exchanging watches." Any agreement to "exchange watches" must have the approval of your supervisor. This is very important! Do not "exchange watches" without your supervisor's approval. Make sure you know what the "sailing time" is before you leave the ship. Ask your supervisor if there is a telephone number you can call to check on the "sailing time" while you are ashore.

VACATIONS

You will generally be relieved for vacation after you have worked sufficient time to accrue the minimum vacation paid leave period. This will normally provide three vacation periods a year. Make sure the man who is to relieve you for vacation has reported on board before you leave

the ship. If your relief fails to show up for any reason you may be instructed to stay on board until the next port or to make another trip before going on vacation. Again, wait for your relief to come on board to relieve you before leaving the vessel.

IT IS A STANDING COMPANY RULE THAT:—
A MAN SCHEDULED FOR VACATION-PAID LEAVE IS REQUIRED TO REMAIN ABOARD THE VESSEL UNTIL HIS RELIEF IS PHYSICALLY PRESENT.

LEAVES OF ABSENCE

It is expected that you will plan to take care of personal business when you are on vacation and for this reason leaves of absence approvals are held to a minimum. But if you do have pressing need for a leave of absence—remember:

There is a proper way to request a leave of absence. Make the request in writing and send it to the Beaumont Personnel Office via the Master who will countersign it and add any pertinent comment he deems necessary. In case of emergency, sudden illness, accident or death in family, etc., request approval for such emergency leave from the Master before leaving the vessel and contact your Assignment Office at first opportunity after arrival home.

Men who leave a vessel without proper approval will be classified "quit" and will be subject to disciplinary action including termination of employment.

MOBIL INSISTS YOU BE SAFE

Oil tankers, refineries, and terminals employ a lot of people. When you practice "Safety First" you protect yourself as well as your shipmates.

Don't smoke or light matches on refinery property on the way to the ship.

Smoking on a ship is permitted only inside the after house and in certain parts of the midship house. LEARN WHERE SMOKING IS PERMITTED BEFORE YOU SMOKE.

When you join a ship be sure you take one bag at a time up the gangway. Keep one hand free to hold on to the gangway manropes. Every experienced seaman keeps "one hand for the ship and one hand for himself."

The handrails that run around the ship are just what the name says they are. Handrails are made to hold on to with your hands. Don't ever sit on a handrail. If the ship rolls or pitches you can very well fall into the sea.

Every ship has safety equipment for use when doing special work. You are required to work safely. This means wearing hard hats, face shields, goggles, protective gloves or clothing whenever they are needed.

A safety pamphlet is included with this booklet. Read what it says and then practice what it preaches.

The Company recommends that seamen wear safety shoes and that if they use eye glasses, they be of the safety lense type. Your supervisor can tell you how to obtain safety shoes and safety glasses through a special program where the Company pays part of the cost.

ILLNESS OR INJURY

If you become ill or get injured report this illness or injury promptly to your supervisor. There is a ship's Medicine Chest with a full stock of medicines, bandages and other medical supplies on board each ship. The Captain attends to all illnesses and injuries. Shore medical advice is also available to the Captain via the ship's radio. Visits to doctors and dentists in port will be arranged by the Captain. As a bonafide active, American seaman you are entitled to Medical/Dental treatment at a U.S. Public

Health Service Facility (Marine Hospital) free of charge. You must get a Master's Certificate of Ill or Injured Seaman from the Captain before going to the Public Health Service who will ask for the certificate before treatment.

If you elect to treat with a doctor, dentist or hospital of your own choosing you are responsible for payment of all charges. If you are enrolled in one of the Company group Medical Expense Plans you will be entitled to certain coverage as specified in that plan. It is your responsibility to claim such plan benefits by submitting your expenses directly to Metropolitan accompanied by the required claim form. You remain responsible for all costs not covered under the plans. Unless treatment by a private doctor or dentist has been specifically authorized by a qualified Company representative, the cost of private Medical/Dental treatment is your responsibility.

If you become seriously ill or injured while on vacation you must promptly notify the personnel office of this fact in order to qualify for Sickness and Accident benefits, these benefits will not be paid on a retroactive basis.

YOUR BENEFIT PLANS

When you have completed your six months' service as a probationary employee you will become eligible to enroll in the benefit plans. These plans include life insurance, a pension plan, total and permanent disability benefits, sickness and accident benefits, all provided without cost. There is also an optional hospital plan and major medical expense plan to which both the employee and the employer contribute. You will be given a copy of the plans and the forms to complete for enrollment after you have been employed for six months.

If on completion of your probationary service you do not receive enrollment forms immediately, report this to the Personnel Office in Beaumont so as to be sure you do receive

them for the completion of these forms is most important to you because:

1. You designate a beneficiary for your life insurance.
2. You can obtain medical expense insurance for yourself and dependents.
3. You become properly enrolled for the Retirement (Pension) Plan.

UNION REPRESENTATION

All unlicensed employees are represented in labor negotiations by the Oil, Chemical and Atomic Workers International Union, Maritime Local 8-801.

This Union bargains your wages, hours, working conditions, benefit plans, and other conditions of employment.

You were given a copy of the labor agreement when you were hired. Take time to read this book as soon as you can. You will be expected to live up to the agreement provisions as will the Company.

SHIPBOARD LANGUAGE

Seamen have built up a number of expressions and words which have meaning to them. This practice is no different than the words which other workers use in their particular jobs. No matter what job you start out on you will have to learn new words and expressions. Here are a few of the words most commonly used on a ship.

Aboard—On or in a ship.

Aft, After—Any direction from the bow toward the stern.

Aloft—Above the deck. (usually on masts, etc.)

Amidships—In the longitudinal, or fore-and-after center of a ship. Halfway between stem and stern. The term used to convey the idea of general locality but not that of definite extent.

Ballast—Weight, portable or fixed, introduced into vessel's tanks or compartments to improve trim or stability. Sea water is generaly used as ballast in tankers.

Beam—The extreme width of a ship.

Below—Underneath a deck or decks.

Bilges—The lowest portion of a ship inside the hull, considering the inner bottom, where fitted, as the bottom hull limit.

Bow—The fore end of a ship.

Bridge—A high transverse platform, often forming the top of a bridge house, extending from side to side of the ship, and from which a good view of the weather deck may be had. An enclosed space called the pilot house is erected on the bridge in which are installed the navigating instruments, such as the compass binnacle, the control for the steering apparatus, and the signals to the engine room. The operation of the ship is directed from the bridge.

Bulkhead—A partition in a ship which divides the interior space into various compartments. Corresponds to a "wall" in a building.

Deck—A platform or horizontal floor which extends from side to side of a vessel.

Draft—Of a vessel—the depth of a vessel below the waterline measured vertically to the lowest part of the hull or propellers.

Galley—The space on a vessel in which the food is prepared and cooked, the kitchen.

Gangway—The walkway up the ship's side for walking on and off the vessel.

Knot—One nautical mile per hour. (About 6,080 feet vs. land mile 5,280 feet)

Ladder—Any stairway or stairs.

Messroom—A space or compartment where members of the crew eat their meals; a dining room. A dining room in which officers eat their meals is called a saloon.

Port side—The left-hand side of the ship looking forward.

Quarters—Living space for personnel. It includes staterooms, dining salons, messrooms, lounging places, passages connected with the foregoing, etc.; individual stations for personnel for fire or boat drill, etc.

Starboard Side—The right side of a vessel looking forward.

Stern—The aftermost part of the vessel.

Topside—That portion of the side of the hull which is above the designed water line.

This booklet is issued only as a summary to assist you in getting started with Mobil. It is by necessity, relatively brief and general, and does not contain all the specific information on a particular subject. You can get specific information by consulting with your Supervisor.

LIST OF OFFENSES WHICH ARE CAUSES FOR DISMISSAL

The following list of offenses shall constitute cause for which employees may be discharged without further notice:

1. Intimidating, coercing or discriminating against a fellow employee because of membership or non-membership in any labor organization.
2. Wilful violation of any law.
3. Fighting or attempting bodily injury to another; drunkenness; conduct which violates common decency or morality; carrying concealed weapons.
4. Stealing, or malicious mischief resulting in the injury or destruction of property of other employees or of the Company.
5. Smoking, or carrying matches other than safety matches, or having open lights or fires within prescribed areas where such practice is forbidden.
6. Falsifying or refusing to give testimony when accidents are being investigated or when application for employment or physical examination is being made.
7. Insubordination, including failure or refusal to perform work assigned.
8. Wilful neglect in care or use of Company's property or equipment.
9. Harboring an infectious disease which might endanger the health of fellow employees.
10. Failure to report for duty except for causes beyond employee's control.
11. Sleeping while on duty.
12. Introduction, possession, or use on the property of the Company of intoxicating liquors or habit-forming drugs.
13. Smuggling of contraband or falsifying statement in regard to contraband.
14. Carelessness in regard to accidents and safety of fellow employees.

15. Failure to immediately report accidents or personal injuries to properly delegated authority wherever possible.

For other offenses not on the above list an employee shall not be discharged without first having been notified that a repetition of the offense will make him liable to dismissal.

February 25, 1972

cc: Mr. F. E. Claro
Dr. J. K. Stewart
Mr. E. E. Bruce

Mr. Oslie Parsons
19740 S.W. 115 Avenue
Miami, Florida 33157

FILE ON SECTION—

Dear Mr. Parsons:

Based on his examination of you on January 25th Dr. Stewart explained to you and advised us that you should not engage in any work requiring heavy lifting, pushing or pulling and that you should not continue in your work as a seaman.

The letter dated December 14, 1971 we received from your personal physician, Dr. Limond D.O. informed us that he had advised you not to do any heavy manual work that would require excessive exertion.

Dr. Lombardo, the heart specialist who examined you on February 18th wrote us that he had advised you to seek light duty shore work.

In view of Dr. Stewart's advice to us that you should not work as a seaman we shall have to terminate your employment when your Sickness and Accident benefits expire March 1, 1972. The date of your employment termination will therefore be March 2, 1972.

As a participant in the group plans for life insurance and medical expense insurance you can convert each of these to a personal policy with Metropolitan Life Insurance Company. A letter giving more detail about this as well as the necessary forms are enclosed.

We wish you the best and hope that you find suitable employment to replace your work as a seaman.

Yours very truly,

J. T. Knepper, Manager
Gulf-East Coast Operations

COTobey/vr
encl.

THE ATTORNEY GENERAL
OF TEXAS

Austin 11, Texas

March 14, 1961

WILL WILSON
Attorney General

Honorable David W. Ratliff, Chairman
Labor and Management Relations Committee
Senate of the State of Texas
Austin, Texas

Opinion No. WW- 1018

Re: Whether the "agency shop" clause in labor union contracts contravenes Sec. 8a, Article 5154a; Sec. 2, Art. 5207a; and Section 1, Art. 5154g; V.A.T.C.S.

Dear Senator Ratliff:

The Senate Committee on Labor and Management Relations has requested an opinion as follows:

> "Does the 'agency shop' clause contravene existing statutes of the State of Texas by requiring that employees covered by the clause, who fail *voluntarily* to *acquire* or *maintain* membership in the union, (as a condition of employment,) pay to the union each month a service charge or fee as a contribution toward the administration of the agreement and the representation of such employees?"

Your letter points out that many out-of-state companies have negotiated collective bargaining agreements with various unions containing "agency shop" clauses, which companies have branch plants in Texas, and that some

Texas corporations are being pressed to sign contracts containing this clause. Your Committee is interested in this problem to see if corrective legislation is required.

The standard "agency shop" clause in a contract between the union and management requires each employee who fails voluntarily to acquire and maintain membership in the union, as a condition of employment, to pay to the union each month a service charge as a contribution toward the administration of the contract and the representation of such employees. Such service charge is usually in an amount equal to the union's regular initiation fee and a month's dues for the first month after the contract goes into effect, and for each month thereafter in an amount equal to the regular monthly dues.

Section 8a of Article 5154a, Vernon's Civil Statutes, reads as follows:

> "*It shall be unlawful for any labor union,* labor organizer, any officer, any agent, or representative or any member of any labor union to *collect, receive or demand, directly or indirectly, any fee, assessment or sum of money whatsoever,* as a work permit or *as a condition for the privilege to work from any person not a member of the union;* provided, however, this shall not prevent the collection of initiation fees as above stated." (Emphasis added.)

Section 2 of Article 5207a, Vernon's Civil Statutes, reads as follows:

> "No person shall be denied employment on account of membership or non-memberhip in a labor union."

Section 1 of Article 5154g, Vernon's Civil Statutes, reads as follows:

> "It is hereby declared to be the public policy of the State of Texas that *the right of persons to work shall not be denied or abridged on account of membership*

> *or non-membership in any labor union* or labor organization *and that in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion.*"

It is clear from a reading of the foregoing statutes that it was the intention of the Legislature to make membership or non-membership in a labor union a voluntary matter with each individual worker, and to protect him in his right to continue to work at his job, regardless of his decision. Section 1 of Article 5154a, V.C.S., reads in part as follows:

> "Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. *The working man, unionist, or non-unionist, must be protected. The right to work is the right to live.* (Emphasis added.)

The *Agency Shop* Contract is of fairly recent origin. Heretofore, the three usual types of union security have been: *the Closed Shop; the Union Shop;* and the *Maintenance of Membership Arrangement.*

Under the *Closed Shop* contract the employer can hire only union members, and is forced to discharge employees failing to maintain their membership in good standing in the union.

Under the *Union Shop* contract the employer can hire without regard to union membership, but the employee must become a union member within a specified time and thereafter maintain his membership in good standing.

The *Maintenance of Membership Arrangement* allows the employer to hire without regard to union membership or non-membership, but during a specified limited time at the beginning of the contract or of being employed, as the case

might be, every employee must decide whether or not he will join or remain a member of the union. Those who choose to join must remain members until the next so-called "escape period" which occurs at the beginning of each contract renewal. However, those employees electing not to join the union are free to remain as non-union employees for the life of the existing collective bargaining agreement.

If it be argued that the Agency Contract does not require any person to become a member of a labor union as a prerequisite to obtaining or holding a job, then let it be noted that Sec. 8a of Article 5154a, supra, prohibits the collection of any fee, assessment or sum of money whatsoever as a condition for the privilege to work from any person not a member of the union. Indiana, a right-to-work state, has held that the agency shop is lawful under *its* laws, but did so on the ground that the Indiana right-to work law is penal in nature, and must, therefore, be strictly construed. There being nothing in the Indiana statute which specifically prohibits the agency contract, the court held that under a strict construction of the penal law the agency shop contract could not be considered to be covered by the Indiana act by implication. *Meade Electric Co. v. Hagberg*, 159 N.E.2d 408 (Ind. App., 1959).

While the Agency Shop Contract as a type of labor union contract was not in vogue at the time of the enactment of Article 5154a, the Legislature certainly intended to cover this type of contract when it enacted Section 8a of Article 5154a, by whatever name it came to be called in later years. But aside from Article 5154a, the agency shop contract violates Section 2 of Article 5207a and Section 1 of Article 5154g, *since the required payment of the service charge is tantamount to compulsory membership in a labor union, and upon failure to pay the service charge, results in loss of the non-union worker's job, if the contract is enforced.* The payment of the service charge makes the non-union member subject to all of the pecuniary liabilities of the

union member, without any corresponding privileges. He is, in effect, a disenfranchised union member against his will.

In *A. F. of L. v. Mann*, 188 S.W.2d 276 (Civ. App., 1945) the Court was called on to construe Article 5154a. In construing Section 8a of Art. 5154a, the Court referred to closed shop contracts, and the arguments made by appellants that the fee charged against non-union workers was a part of the cost to such union in obtaining and maintaining union conditions and servicing the employees on the job. Indicative of the intent of the Court to apply Section 8a to more than the closed shop contract is the following language at page 285:

> ". . . enforced collection by unions from non-union employees for such benefits as a right to work is another matter, Carried to its logical conclusion, the same reasoning would justify such exactions on any job wherein unions are involved, *whether under closed-shop contracts or not;* and ultimately could lead to the same policy toward all labor, on the ground that all labor had benefited from union efforts. Thus the public interest is so affected by the practice prohibited in Sec. 8a, and the potential abuses and injustices to laborers who are not members of an organized union, whether from choice or inability to become so, that the Legislature was warranted in forbidding such practice. (Emphasis added).

If any Texas statutes affecting labor do not apply in any given situation, it will be because the Congress has preempted the field with its own legislation with regard to the particular facts of the case. Certain acts and conduct, such as peaceful picketing of an employer's place of business in an industry affecting interstate commerce, has been held by the Supreme Court of Texas, in *Ex Ponto Tweedll*, 309 S.W. 2d 834 (1958), to lie outside the jurisdiction of our state courts. But membership in a union as a prerequisite to obtaining or holding a job is a different matter. Congress

has made an exemption in favor of the states in the Labor Management Relations Act, 1947, in 29 U.S.C.A. Sec. 164 (b), which reads as follows:

> "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

In *Finney et al v. Hawkins,* 54 S.E.2d 872, the Supreme Court of Appeals of Virginia was called upon to construe Virginia's "Right-to-Work" law, Section 1 of which reads as follows:

> "It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

The Virginia court stated in the *Finney* case at page 877:

> "At pointed out in the state court decisions in State v. Whitaker, (45 S.E.2d 860) . . ., and Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co., 149 Neb. 507,31 N.W.2d 477, recent federal legislation makes clear that Congress did not intend to interfere with the right of States to prohibit agreements requiring membership in a labor organization as a condition of employment. . . . 29 U.S.C.A. Sec. 164 (b)."
>
> ". . . .
>
> "There was evidence to be found in the acts of many States and of the Federal Congress to support the view that discrimination against employees because they did or did not belong to a union was against the public interest and should not be allowed. Laws merely regulating the union obviously would not accomplish that purpose. Basically, agreements involving such discrimination are hostile to our free enterprise system and to individual liberty of choice and action. Legislation that protects the citizen in his freedom to disagree and to decline an association which a majority would thrust upon him on the ground that it knows what is best for him, does no violence to the spirit of our fundamental law. The protection of minorities is the boast of our institutions and a basis of their asserted superiority over totalitarian regimes. The results have demonstrated the value of the democratic process."

In response to your question, we hold that the "Agency Shop" clause in a contract between a labor union and management contravenes and is in violation of Section 8a of Article 5154a; Section 2 of Article 5207a; and Section 1 of Article 5154g of Vernon's Civil Statutes.

SUMMARY

The "Agency Shop" clause in a contract between a labor union and management violates Sec. 8a, Art. 5154a; Sec. 2, Art. 5207a; and Sec. 1, Art. 5154g, V.C.S.

Yours very truly,

WILL WILSON
Attorney General of Texas

By
Riley Eugene Fletcher
Assistant

REF:rd

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
Joe McMaster
Jack Price
Martin DeStefano
Raymond Loftin

REVIEWED FOR THE ATTORNEY GENERAL
By: Morgan Nesbitt

April 23, 1970

Socony Vacuum Tanker Men's Association
Local 8-801, O.C.A.W.I.U.
Room 605
1 Beckman Street
New York, N. Y. 10038

Dear Sirs:

Enclosed for your information is a copy of a notice we are presenting to each new unlicensed employer. As we have previously advised you, Article I, Section 2b. of the Collective Bargaining Agreement is invalid under Texas law. We, therefore, feel that neither of us should place ourselves in the position that someone could say that we were enforcing a provision contrary to law.

Very truly yours,

John T. Knepper, Manager
Gulf-East Coast Operations

JTK/vr

bcc: D. J. Maroldy
P. H. Ghee, Attn: W. H. Greene, Jr.
A. E. Fischer
C. S. Townshend

EXHIBIT B

Unlicensed employees in the Gulf East Coast fleet are represented for collective bargaining purposes by SVTMA, Local 8-801, OCAWIU. As an unlicensed employee, the Collective Bargaining Agreement between the Union and the Company determines your wages, hours and other conditions of employment. In order that you may have a voice in these matters you may wish to become a member of this Union. Such membership is voluntary on your part and the Company neither encourages nor discourages membership. Under the current Agreement, if you become a member of the Union, you must continue to be a member and/or pay the regular union dues during the term of the Agreement.

I acknowledge and understand the foregoing.

....

Signed Date

July 1971

MARITIME LOCAL 8-801 O.C.A.W.I.U.

NEWSLETTER

The Union is happy to enclose copies of various ships minutes which have been forwarded to us recently. We also take the liberty to comment on certain questions which have been raised. On the whole, the minutes are well prepared and intelligently presented. We are happy to see that most members are taking an active interest in the Union.

We wish to resolve at the onset the question regarding Union membership. Our Contract is clear on this point and should be read by all members. Section 2 of the Contract provides in effect that persons who are members when the Contract was signed or any new employees must remain or become members of the Union or pay dues to the Union. *This is a condition of employment.*

As far as this Union is concerned, any employee in our Division of Mobil must either join our Union or pay dues to the Union. We intend to exercise our right to have the employment of any unlicensed seamen terminated who does not join or pay dues to the Union. We hope this answers all questions regarding this point.

The arbitration regarding Butterworthing is over and we are happy to report that we have been successful.

A number of inquiries have come in regarding wages, profit sharing, savings plans and vacations. We are reviewing the entire situation on these matters since these are subjects for our next negotiations. Any and all suggestions are welcome so please send them in.

There are a number of questions concerning seniority which have arisen. Please be advised that our Union takes very seriously any violation of our seniority rights. Our policy is to take immediate action whenever we are informed of a violation of seniority rights. We carefully investigate all grievances presented to us. As a matter of fact we presently have two such grievances on file with the Company and shall follow through to the utmost. In the case of Brother George LaChance who was demoted from Oiler to Fireman we have found that Brother Lachance quit Mobil shortly after the Strike and only returned as a new member. Therefore, his claim for seniority was not a valid one. You can see, that we will leave no stone unturned in investigating problems on seniority.

• • •

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

The hereinafter signatory parties do hereby understand and mutually agree as follows:

(1) Neither the Company nor the Union shall take any retaliatory action or recriminate against any employee on account of activities during the strike to the date of this agreement, and hereafter.

(2) The terms and provisions of the collectively bargained Agreement between the parties hereto is subject to ratification by the Union.

(3) Upon receipt of notification from the Union to the Company that the aforesaid and referred to Labor Agreement collectively bargained has been ratified, thereupon the Company shall promptly notify the employees of their eligibility to return to work, standby status or vacation.

(4) Accordingly, each party agrees that any action, claim or charge it has instituted or could institute is resolved, and the Union will withdraw its NLRB Case No. 23-CA-3440 and the Company will obtain a dissolve of the temporary injunction at Beaumont, Texas, both with prejudice.

(5) The Company's waiver of action is based on the promise of the Union to remove all pickets in shore and in water against vessels and terminals, shipyards and refineries at which such vessels may call, load or discharge and no employee will engage in any violence or threat of violence from this date and hereof forward.

In Witness Whereof the parties hereto cause these presents to be executed by their duly authorized representatives as set forth below on this ..... day of October 1969, in New York City, N. Y.

Socony Vacuum Tankermen's Association Local 8-801 OCAWU By FJA By DHS	Mobil Oil Corporation Marine Transportation Department Gulf-East Coast Operations By John T. Knepper

Oil, Chemical and Atomic Workers International Union

By: R. L. Clark

October 30, 1969

Before 14

Memorandum of Understanding & Agreement:

The hereinafter signatory parties do hereby understand and mutually agree as follows:

(1) Neither the Company nor the Union shall take any retaliatory action or recriminate against any employee on account of activities relating to the strike to the date of this agreement, and hereafter.

(2) The terms and provisions of the Collectively bargained Agreement between the parties hereto is subject to ratification by the Union.

(3) Upon receipt of ratification from the Union to the Company that the aforesaid and referred to Interim Agreement & Collectively bargaining has been ratified, thereupon the Company shall promptly notify the employees of their eligibility to return to work, steady status or vacations.

Notify

(4) Accordingly, each party agrees that any action, claim or charge it has instituted or could institute is resolved, and the Union will withdraw its NLRB

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(41) (Cont'd)

Case No. 23-CA-3440 of the Company will obtain a dissolve of the temporary injunction of Beaumont Tyco, both such prejudice

(51) The Company's Motion for action is based on the promise of the Union to remove all picketers on Sneeden water equipment trucks and terminals, shipyards and refineries on which such trucks may call, and to discharge and no longer engage in any violence or threat of violence from this date

Re [illegible] hereof

Petitioner Wherefore the petitioner here to cause these presents to be presented by their duly authorized representatives to set forth below on this ___ day of October 1969 in New York City.

Sworn Vacuum Tanker Inc. Petrol Oil Corporation
Acevedo Local 5-501 Marine Transportation Dept.
R.H.W.U. Gulf Coast Corporation
By P.K. October 30, 1969 By John Keegan
By
Oil Chemical and Atomic Workers International Union
By: R.L. Clark

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BULK RATE
POSTAGE PAID
Beaumont, Texas
Permit No. 24

Mobil Mariner

Published for Employees of Gulf-East Coast Operations

Mobil Oil Corporation, Box 3444, Beaumont, Texas 77704. Address Correction Requested.

Number 61 July, 1971

MOBIL SHIPS RECEIVE COAST GUARD COMMENDATIONS

In recognition of their participation in the AMVER (Automated Merchant Vessel Report) Program, all Gulf-East Coast ships have received certificates of award and AMVER pennants from the Coast Guard.

The commendations, from Admiral C. R. Bender, Commandant, U. S. Coast Guard, U. S. Maritime Search and Rescue Coordinator, said "It is with a great deal of pleasure and deep appreciation that I take this occasion to forward to you the enclosed Certificate of Recognition for your efforts in furthering international maritime safety. I have also furnished a red AMVER pennant which, when flown, identifies your vessel as one which is continuously and unselfishly striving to make the oceans of the world safer for all who travel over and upon them."

The AMVER system is a maritime mutual assistance program whichprovides important aid to the development and coordination of search and rescue efforts in the offshore areas of the Atlantic Ocean, Caribbean Sea, Gulf of Mexico and the Pacific Ocean. Merchant vessels of all nations voluntarily send sailing reports and periodic position reports to the AMVER Center at Coast Guard New York via selected coastal, extra-continental or Ocean Station Vessel radio stations.

Information from these reports is entered into an electronic computer which generates and maintains dead reckoning positions for vessels while they are within plotting areas.

Search and rescue capabilities of the vessels are also filed in the computer's memory.

When an emergency arises at sea, the computer may be asked to provide the name, location and usefulness of vessels near the scene. The operator feeds in the position of the distress, and in seconds the computer prints out the names and positions of all participating vessels within the area of the distress. This is known as a SURPIC (Surface Picture). The computer also knows the speed and rescue capabilities of the vessels — including the type of medical assistance (doctor or medical technician) aboard.

Three Gulf-East Coast ships have recently participated in search and rescue operations under the AMVER program. In November, 1970 the MOBIL *FUEL* took part in the search for a vessel reported sinking off Cape Hatteras. Last April, the COLINA and SOCONY VACUUM diverted in response to an AMVER message, to aid in the search for a vessel reportedly in distress near Key West.

In neither case did the Mobil ships provide direct assistance, but, as the Coast Guard commendation said, "Such response and the coordination between those who ply the seas for pleasure or profit continues to be a major reassurance to those in peril."

The first Gulf-East Coast ship to receive her AMVER pennant and Certificate of Recognition was the MOBIL LUBE. Captain L. A. Papich, Marine Superintendent, presents the certificate to Captain Harold Vreeland, who was leaving the ship to go on vacation. From the left, Edward Hughes, third mate, Captain Geoffrey Hutton, relieving Captain Vreeland, John Lytton, radio officer, Captain Vreeland, Captain Papich and Henry Lightfoot, chief officer.

CHECK YOUR INCOME TAX WITHHOLDING

Many taxpayers are likely to have too little withheld from their paychecks this year, the Internal Revenue Service warns. For one thing, the top withholding rates are limited to 24 per cent for single persons and 25 per cent for married persons, while actual tax rates run much higher. In addition, withholding is based on the new 13 per cent standard deduction. But there's also a $1,500 ceiling on that deduction, and withholding doesn't allow for that.

Taxpayers most likely to need extra withholding include:

1. Employees who expect to earn more than $11,500 in 1971 and intend to claim the $1,500 standard deduction or itemize deductions totalling less than 13 per cent of their salaries.

2. Single employees who expect to earn $15,000 or more.

3. Married employees who expect to earn $25,000 or more and whose spouses are not working.

4. All working couples.

Employees in any of these categories who wish to avoid paying a large tax bill next April may either reduce their present number of claims exemptions or sign up for additional withholdings. Either of these methods may be accomplished simply by using Form W-4 available from masters or the Beaumont office.

Temporary Licenses Discontinued

The U. S. Coast Guard has announced that effective July 19, the policy of issuing temporary mate's and engineer's licenses will be discontinued. All temporary endorsements will be invalidated as of that date.

Mr. and Mrs. Charlie Twitchell in the back yard of their Beaumont home, with their two companions, the Dachshund Skipper and the white German Shepherd Schotzie.

Charlie Twitchell Celebrates Forty Years Service

On July 9, chief engineer Charles Twitchell completed 40 years of continuous Mobil service. He shipped out with the Company, his first trip to sea, just after graduating from high school in East Boston in 1931. The Depression was in full swing and job opportunities for a young high school graduate were not plentiful.

Charlie's stepfather, Jorgen Jorgensen, had been sailing as steward in Mobil ships for several years. He suggested that the young man go to sea. It seemed like a good idea at the time, and Charlie put in his application at the shipping office in Providence, with "Captain Dick" Comandich.

His first job was ordinary seaman in the LEVANT ARROW. After sailing as ordinary, messman and wiper in various ships, Charlie decided that he wanted to make his career in the engine room. Starting as wiper in the ARGON in August, 1933 he shipped as wiper for a year. For the next five years he alternated between fireman and oiler. (That was when the oiler did the water tending). In 1939 he became regular oiler. He got his third assistant's license in 1943 and first sailed on it as junior third assistant in the second MOBILOIL in November of that year.

The original MOBILOIL had been sunk by enemy action on April 29, 1942. Charlie was oiling on her at the time. He has a vivid recollection of the action.

"I was off watch and asleep when the first torpedo hit, about 0230," he said. "It hit the bow, but didn't disable us. The second torpedo hit amidships about 0500. It was light enough for us to see the sub, and we engaged her in a gun battle. My battle station was at the 5-inch gun on the poop deck. I was one of the ammunition passers. The sub stopped firing first and submerged. We thought the action was over. Then, sometime later the third torpedo hit in the pumproom amidships and we were finished. We took to the lifeboats and watched her break in half and go down in a matter of minutes, with the whistle blowing.

"Number one lifeboat had been demolished by the second torpedo. All hands had managed to get into the three remaining boats and under the command of Captain E. V. Farrow our little fleet set sail for the nearest land, Hispaniola. The next day we were sighted by a plane which dropped a message saying that a British navy ship would come to our rescue. The rescue ship never appeared. We later learned that it had run low on fuel and had to give up the search for us.

"The next day, May first, a U. S. Navy ship found us, rescued all hands, and landed us on May fourth at San Juan, Puerto Rico."

The next most dramatic incident that Charlie recalls in his 40 years at sea was a collision between two tankers in the Neches River in 1936. There was no fire, and nobody was injured. Charlie's luck was with him this time, too. He was a fireman, and his ship was rammed in the fireman's fo'c's'le, which was forward. All the firemen were aft at the time.

Charlie became second assistant in 1946, first assistant in 1949 and has been sailing as regular chief since May, 1970.

He has no immediate plans for retirement. He and his wife Martha have property on the Chattahoochie River in Alabama, and are planning to build a home there. When he does retire, he plans to help his son-in-law in a truck transmission business part time, relax and fish whenever he feels like it.

Charlie points with pride to a safety record that is going to be hard to beat. "In my 40 years at sea," he said, "I've never lost a day because of injury."

Ed Hughes holds the piece of the equator from the floor of the Pacific Ocean.

Ed Hughes Carries A Piece Of The Equator With Him

Third mate Edward Hughes has an unusual certificate attesting to his status as a Shellback (one who has made an ocean crossing of the equator.) He values it more than any plaque or scroll. It is a piece of the equator itself.

He was chief mate of the Research Vessel PILLSBURY, survey ship for the University of Miami, Florida, in 1967, engaged in oceanographic research. They were taking samples of the ocean floor off the west coast of South America in February. According to the navigator, one of these samples was taken at 103° W longitude, and 0° latitude. Each crew member received a plastic packet of gray sand labeled "Sample of Ocean Floor, Equatorial Pacific", with the ship's name, the date and location, showing that they had not only crossed the equator, but had a piece of it.

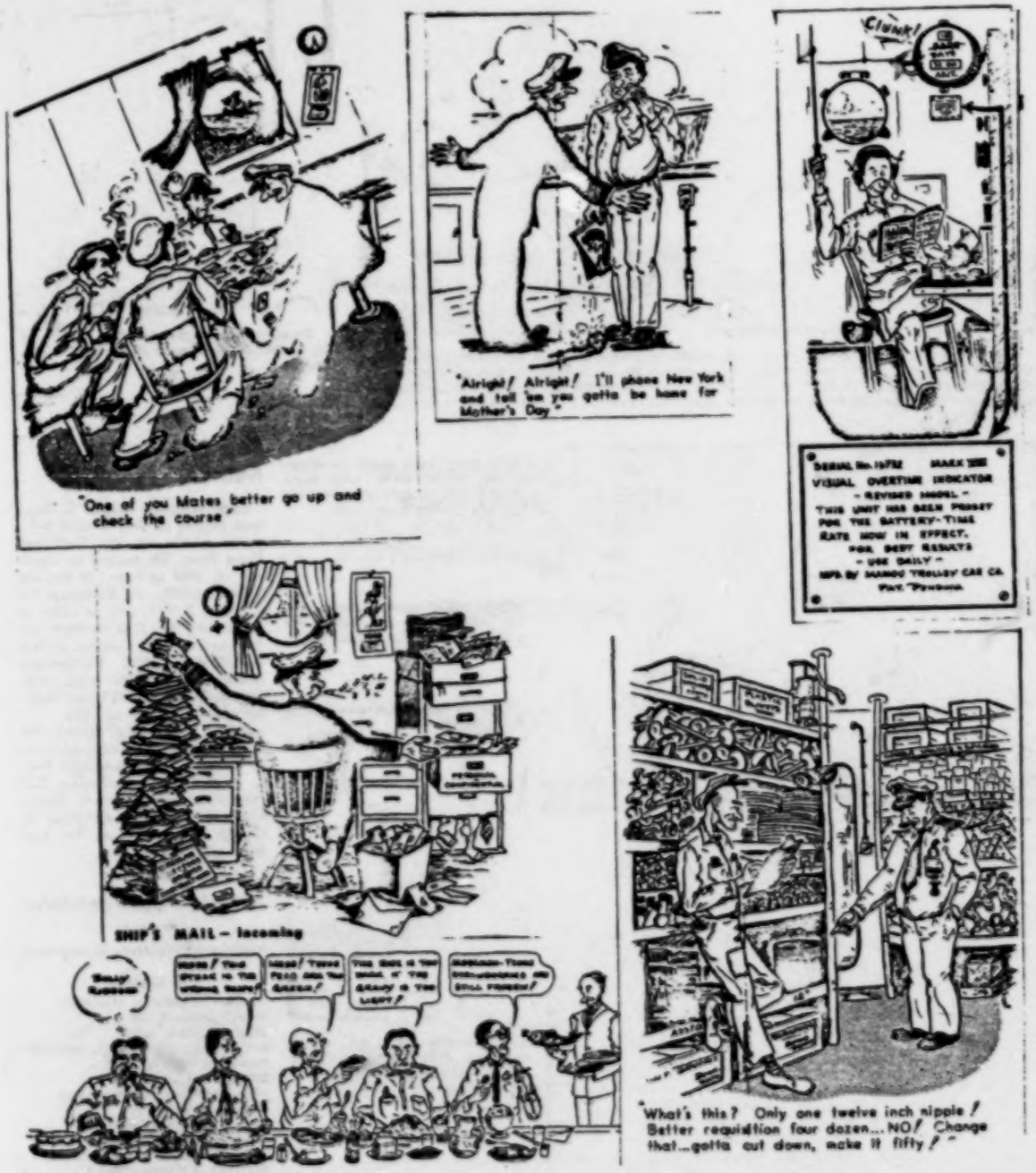
Mobil Mariner is published for the seagoing employees and annuitants of the Gulf-East Coast Operations, Marine Transportation Department, Mobil Oil Corporation.

John T. Knepper, Manager
R. D. Miller, Editor

Contributions and suggestions are invited. They should be addressed to The Editor, Mobil Mariner, Mobil Oil Corporation, P. O. Box 3444, Beaumont, Texas 77704.

The Ships—As Figured From the Office

By Al Merrikin—Courtesy of THE RANGE LIGHT



NEWS AND VIEWS FROM MOBIL CREWS

Terry Barnes took the photo above on vacation before joining the MOBIL MERIDIAN as first assistant. While he and Mrs. Barnes were visiting her relatives in Blarney, Ireland, they stopped in to visit with pumpman Jerry O'Leary's family in Roon, Ireland. Jerry is at the left and Mrs. O'Leary at the extreme right. Third from the left is the Barnes's daughter, Christina. All the others are members of the O'Leary family.

The unidentified photographer caught AB Bob Ellis in a happy mood at the helm of the COLINA.

LEFT: Coffee time in the messroom of the MOBIL LUBE, with bo'n Charlie Leibig, galleyman Howard Kay and Lennox Bullen, OS.

BELOW: Chief cook Florencio Arnias and messman Gary Hill in the galley of the SOCONY VACUUM.

LEFT: Relaxing off watch in the messroom of the MOBIL AERO are William Christie, oiler, Donald McIntyre, oiler and Frank Avery, steward.

August Bateman Retires

Chief engineer August T. Bateman retired on July 1 with 25½ years' service in the Gulf-East Coast Fleet. He started on January 11, 1946 as wiper in the old MOBIL FUEL. In February, he sailed as F/WT, and as Oiler in September. His first licensed job was junior third assistant in the SACHEM in 1951. He became second assistant the next year, first assistant in 1968 and regular chief engineer in 1970.

Before joining Mobil, he worked for various oil companies in Arkansas, Louisiana and Texas in production and pipe line operations. He came to Mobil from Consolidated Steel in Orange, Texas where he had been welder leadman.

Service Anniversaries

5 Years

ANGELITO CADAWAN, Second Cook

6 Months

ADRIAN ALFOUGH, Messman
BRUCE BROWN, AB
JOHN CUZELA, AB
PRUDENCIO FERNANDEZ, Messman
NORMAN FERRER, F/WT
GERALD MALABRE, OS
CARL MAGNUSSON, Pumpman
BLAISE MASELLI, OS
RAYMOND MYERS, Messman
RAYMOND NIEVES, Messman
JOSEPH RUSS, First Assistant
RONALD SERAKAS, Oiler
WALTER VARNADO, Messman

A G R E E M E N T

Between

MOBIL OIL CORPORATION
Marine Transportation Department
Gulf-East Coast Operations

and

SOCONY VACUUM TANKER MEN'S
ASSOCIATION LOCAL 8-801
OIL, CHEMICAL & ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO

UNLICENSED SEAMEN

NOVEMBER 1, 1969

A G R E E M E N T

between

MOBIL OIL CORPORATION
Marine Transportation Department
Gulf-East Coast Operations

and

SOCONY VACUUM TANKER MEN'S ASSOCIATION LOCAL 8-801
OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

NOVEMBER 1, 1969

THIS AGREEMENT is made by and between Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, hereinafter referred to as the Company, and Oil, Chemical & Atomic Workers International Union, AFL-CIO and its local Socony Vacuum Tanker Men's Association Local 8-801, Oil, Chemical and Atomic Workers International Union, AFL-CIO, jointly hereinafter referred to as the Union on behalf of all unlicensed personnel in the deck, engine, and steward's departments, employed on the United States Flag ocean-going vessels manned by the Company.

W I T N E S S E T H

WHEREAS, The Socony Vacuum Tanker Men's Association was certified by the National Labor Relations Board on March 24, 1941 in Case No. R-1633 as the exclusive representative for the unlicensed personnel employed by the Company, and

WHEREAS, said Certification of Representatives issued in Case No. R-1633 was amended by substituting "Socony Vacuum Tanker Men's Association, Local 8-801, Oil, Chemical and Atomic Workers International, AFL-CIO," for "Socony Vacuum Tanker Men's Association" on August 3, 1967, in Case No. 2-AC-2.

NOW, THEREFORE, it is understood and agreed between the parties as follows:

ARTICLE I
GENERAL CONDITIONS

1. RECOGNITION

The Company hereby recognizes the Union as it is herein stated and in accordance with the decision and order of the NLRB dated August 3, 1967, in Case No. 2-AC-2 as the exclusive collective bargaining representative for all unlicensed personnel in the deck, engine, and steward's departments employed on the United States ocean going vessels manned by the Company for the purpose of collective bargaining with respect to wages, hours of employment, working rules, and other conditions of employment.

* 2. UNION SECURITY

a. All employees who are currently members of the Union or who become members of the Union shall, as a condition of employment, continue to remain members and/or pay the regular union dues during the term of the Agreement.

b. For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date.

c. Fifteen days prior to the termination date of this Agreement employees may, by serving notice by registered mail on the Company and the Union, elect to withdraw from the Union and/or discontinue paying dues.

3. The Company agrees to honor all Dues Deduction Authorization letters submitted in the following form and pay such deductions monthly to the Union by the 15th date of the month following deductions.

Date _____

Mobil Oil Corporation
Marine Transportation Department
Gulf-East Coast Operations
P. O. Box 3444
Beaumont, Texas 77704

You are hereby authorized and directed:

a. To forward to the Union a sum each month equal to the monthly dues established and communicated to you by the Socony Vacuum Tanker Men's Association, Local 8-801, OCAWIU. Such monies shall be paid monthly in
* my behalf as my dues, or the equivalent of such dues, to the said Socony Vacuum Tanker Men's Association, Local 8-801, OCAWIU. You are further authorized to withhold the complete amount of monies paid over by you in my behalf under this authorization from the next vacation check due me or in event of my termination from any monies due me.

b. You are further authorized to withhold an amount equal to the initiation fees as indicated to you by the Union when the Union informs you I am a new
* member, or have agreed to pay the equivalent of dues and initiation fee. Such initiation fee shall be withheld from the monies due me during the first month in which I become a new member and no other monthly dues shall be deducted during this month. The initiation fee shall be paid in my behalf to the designated Union office and be deducted from my next vacation check or in the event of termination from any monies due me.

This authorization shall become effective as of the date hereon and shall continue in effect for one year from that date and for each year thereafter unless terminated by me in writing by registered mail to the Company and to the Union not earlier than twenty (20) days nor later than ten (10) days prior to any anniversary date hereof.

Signed_____

Witness_____

4. LOCAL UNION OFFICERS

To assist in the handling of grievances that may arise during the life of this Agreement, or for periods of negotiation for the renewal or modification of this
* Agreement in accordance with the terms herein, Local Union Officers will be assigned to the Standby Staff at their regular rates of pay, subsistence, and transportation allowances, on a rotating basis, two at a time, for a
* period not in excess of ninety days. During such assignments, their hours and working conditions shall be the same as those of the Standby Staff. The Union shall immediately advise the Company in writing of the sequence
* in which the Local Union Officers are to be rotated on this assignment.

5. BULLETIN BOARD

Each vessel shall have a glass enclosed bulletin board for the Union's exclusive use in the unlicensed employees' quarters for the posting of notices, announcements, and other material relating to the Union's affairs. Propaganda, political matter, or advertising shall not be posted. The Union will remove any matter which in the opinion of the Company does not comply with these provisions.

6. TERM OF THE AGREEMENT

This Agreement shall become effective on the date the Union notifies the Company in writing that it has been
* ratified, and shall continue until July 31, 1972, and from year to year thereafter unless written notice to terminate or modify this Agreement is filed by either
* party 60 days prior to July 31, 1972, or any subsequent one year date thereafter.

7. ANTI-DISCRIMINATION

The Company and the Union agree not to discriminate against any employee on account of race, color, or membership or non-membership in any church, fraternity or society provided that any such membership is not inimical to the interests of the state or the nation.

8. NO STRIKES

Neither the Union nor any member thereof during the life of this Agreement, or during the period of negotiations for its modification, extension or renewal shall instigate, encourage or take part in any strike, picketing, sit-down, slow-down or stoppage of work, either direct or in sympathy with third parties which in any way would hinder or restrain the movement of the Company's vessels, or the loading or discharging of cargo from such vessels. Any employee who violates any of the above provisions shall be subject to immediate discharge. Such action on the part of the individual, however, shall not abrogate this Agreement.

* It is provided, however, that the Union may between January 1st and 8th, 1971, and between January 1st and 8th, 1972, give written notice of its desire to strike as provided below.

If such notice is given and if on the 21st day after such notice, Mobil employees represented by OCAWIU are on strike in one or more Mobil refineries or terminals, the Union may call a strike aboard any vessel calling at such struck refineries or terminals for the purpose of loading or discharging cargo there, providing the strike is still in progress at such terminal or refinery. The strike of such vessels shall continue only so long as the striking employees in the refinery or terminal at which the vessel has been struck remains on strike.

The foregoing applies only to bona-fide strikes called by the Union and is not to be construed to relieve individual employees of their obligation not to strike when such strike is not sanctioned by the Union.

In the event the Union's exercise of its rights under this provision results in a strike aboard any vessel, the Company shall be free of its obligations under Section 9 with regard to lockouts with respect to that vessel.

9. NO LOCKOUTS

During the life of this Agreement, or any period of negotiation for its modification, extension, or renewal, the Company agrees that there shall be no lockout of any of the employees covered by this Agreement. The foregoing shall not be construed to prevent or limit the right of the Company to discharge employees covered by this Agreement as hereinafter provided.

10. WAR BONUS

For the purpose of establishing war risk life insurance, war risk areas, bonus rates payable, port bonuses, reimbursement for loss of personal effects and provisions governing repatriation, a supplemental agreement will be negotiated between the parties.

11. VALIDITY

In the event that any provision of this Agreement shall at any time be declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions, not so declared invalid, shall remain in full force and effect, and both parties will meet within ten (10) days to attempt to work out a new Agreement on those matters that were invalidated.

In the event that any competent authority enacts any law or regulation requiring additional compensation to personnel covered by this Agreement, the provisions of this Agreement pertaining to wages and vacation-paid leave may be cancelled by the Company. In the event of such cancellation, both parties to the Agreement will meet within ten (10) days to attempt to work out a new agreement on those matters. This is not for the purpose of reducing monthly compensation through wage rates or vacation-paid leave.

12. MASTER'S AUTHORITY

It is understood and agreed that nothing contained in this Agreement is intended to or shall be construed to restrict

in any way the authority of the Master or prevent the obedience of any member of the crew to any lawful order of any superior officer.

13. GRIEVANCE PROCEDURE

Efforts shall be made to adjust individual grievances which may arise under the terms of this Agreement in the following manner and order:

First: Present the complaint to the immediate superior; Deck Department - Boatswain; Engine Department - First Assistant Engineer; Steward Department - Steward; failing a satisfactory adjustment in this manner,

Second: Present the complaint in the Deck Department - Chief Mate; Engine Department - Chief Engineer, in person or through the official Department or ship representative of the Union; failing a satisfactory adjustment in this manner,

Third: Present the complaint in person or through the official department or ship representative of the Union to the Master; failing a satisfactory adjustment in this manner,

Fourth: Present the complaint to the Port Staff (Deck Department - Marine Superintendent or Assistants; Engine Department - Engineering, Maintenance Superintendent or Assistants; Steward Department - Port Steward or Assistants) in person or through the official department representative and the official ship representative of the Union; failing a satisfactory adjustment in this manner,

Fifth: Present the complaint to the Gulf-East Coast Operations office at Beaumont, Texas, in writing on the approved grievance form, through Local Union Officers or someone appointed by the Local Union Officers.

Each of the above steps must be followed in the order given. As a matter of good order and discipline it is understood that a department representative, duly elected by members of the Union from a particular department on board the vessel, may handle matters pertaining to the department.

The ship's representative, duly elected by the members of the Union on board the vessel, may handle matters pertaining to the welfare of the unlicensed personnel of the entire vessel.

For the mutual benefit of both the Union members and the Company, all grievances must be initiated within sixty (60) days of the date of origin or they shall be declared null and void.

The Company will agree to meet with the Union as soon as practicable for the discussion of grievances and any decision will be retroactive if settlement is involved.

14. UNION RIGHT TO CONFER

Official representatives of the Union who are employees of the Company on board a vessel or assigned to such vessel, shall have the right to confer with the representative or representatives of the Company during working hours without loss of time or pay either on board such vessel or at the Company's offices or other designated shore point, provided this does not interfere in any way with the efficient operation of the vessel.

15. ADDITIONAL REPRESENTATION

In order that employees covered by this Agreement may have access to a Union representative while at sea as well as while ashore, it is agreed that in addition to
* the Union representatives, who are Local Union Officers, there may be a number of Union representatives equal to the number of ships from time to time in active service. The Union agrees to advise the Company at the beginning of the contract and promptly from time to time thereafter as the number of ships in active service fluctuates, of the names of employees designated as Union representatives.

The Company agrees that the crew of each vessel will include one of the designated Union representatives, except that if there is no designated representative available the Company agrees to recognize a temporary alternate representative selected by the Union from the crew provided such representatives are approved by the crew of the particular vessel.

16. ARBITRATION

a. Any question of fact arising out of the interpretation or misapplication of this Agreement or the alleged violation of the express terms of this Agreement which is not settled in accordance with the grievance procedure outlined in Step 5 shall at the request of either party be submitted to a Board of Arbitration. The party moving to arbitration will request a list of seven arbitrators from the American Arbitration Association with a copy of same to the other party.

b. The Board of Arbitration shall be selected as follows: one (1) member to be chosen by the Union, one (1) member to be chosen by the Company. These two shall meet within ten (10) days from the date they are supplied the list of arbitrators (Saturdays, Sundays, and holidays excluded) for the purpose of selecting a third member from said list. If they cannot agree upon a third member, the American Arbitration Association will submit a second list of seven (7) names from which the members will select the arbitrator by alternately striking a name until only one remains.

c. The decision of the majority of the said Board of Arbitration shall be final and binding upon the employee, the Company, and the Union, and shall conclusively determine the same not to exceed the life of this Agreement. The Board of Arbitration shall not have the jurisdiction nor authority to render a decision that would have the effect of adding to, deleting from, modifying or expanding the expressed written terms of this Agreement.

d. The Company and the Union shall bear the expenses of their respective appointees and shall share equally the expenses of the third member. After the Board has completed its hearings and reached its decision, the award shall be announced immediately.

e. If either party refuses to arbitrate under the conditions as set forth above, or, after arbitration, refuses to abide by the decision as heretofore prescribed, the other party in addition to its rights and remedies, may declare this Agreement null and void.

17. CONTINUITY OF EMPLOYMENT

Unlicensed personnel may remain continuously in the employment of the Company provided that both the Company and the employee desire such employment to continue. The Company wishes to encourage continuous service for all unlicensed personnel whose conduct, ability and performance of duties are satisfactory.

* In the event of sale or elimination of the entire Gulf-East Coast fleet, as covered by this agreement, the Company will notify the Union at least 60 days prior to the conclusion of such sale or elimination of same.

During this 60-day period the Company and the Union will meet for the purpose of negotiating termination pay.

18. SENIORITY

Employees covered by this Agreement shall be credited with fleet employment and job assignment seniority as explained herein provided they have completed 180 days of active service with the Company.

Until an employee has 180 days of active service he shall be considered as on probation and his services may be terminated at the discretion of the Company.

a. The Company agrees to furnish the Union a list of employees by departments showing the following dates:

1. Date of employment in the fleet.

2. Date of first assignment to his present position.

3. Date of employment in the Company.

New lists will be furnished the Union annually. The present seniority list will not be affected by this language.

* Employees hired on or after November 1, 1969, will be added to the seniority lists in accordance with the dates on which they became fleet employees. Lists of new employees and terminations will be supplied on a monthly basis.

* b. Promotions within a department that involves going into the rank of boatswain, pumpman, machinist, or chief steward; the following factors shall be considered:

1. Fleet seniority
2. Demonstrated ability
3. Physical fitness

Where demonstrated ability and physical fitness are relatively equal between two or more applicants for the above ranks, fleet seniority shall govern.

* c. In promotions in any department to any rank other than the above four, the same shall be in accordance with fleet seniority subject to the employee having the required endorsements.

* d. In all cases of demotions or lay off due to the lack of work such will be in accordance with fleet seniority. The seniority provisions on layoff will encompass the principal that the last man in is the first man out and the first man in is the last man out.

19. WORKAWAYS

No workaway shall be carried except for the sole purpose of providing transportation and in such cases, shall be in addition to the regular crew.

20. DISCIPLINE

Recognizing the necessity for discipline on board vessels and at the same time in order to protect employees against unfair loss of jobs, the Union and the Company agree that there will be posted by the Company on the bulletin board of each vessel, a list of rules which shall constitute just cause for which unlicensed personnel may be discharged without further notice.

For other offenses not on the posted list, members of the unlicensed personnel shall not be discharged without first having been notified in writing that a repetition of the offense will make him liable to dismissal. In the event that unlicensed personnel feel that any of the rules or regulations promulgated by the Company are inconsistent with the terms of the Agreement, such members agree to make proper and orderly representation as outlined under the grievance procedure of the Agreement.

The Company and the Union shall meet at the request of either party to discuss individual cases of employees who have been separated or suspended for just cause.

The Company will provide the Union with copies of letters of discipline by either registered or certified mail with return receipt requested.

21. BENEFIT PLANS

During the term of this Agreement all employees covered by it will be eligible to participate in the Company's Marine Benefits Program as set forth in a separate Memorandum of Understanding dated November 30, 1967,
* as amended.

22. MEDICAL EXAMINATIONS

All unlicensed personnel shall submit to and undergo such medical examinations as are or may be required by the Company from time to time and the Company shall retain the right to reject such unlicensed personnel as may be determined by the Company's medical examiners to be unfit for employment in keeping with the Company's rules and regulations. The Company agrees to review carefully any case which the medical examiners of the Union certify to be free from communicable disease and disabling defects and to be able to do the work applied for by the applicant, and if a review fails to establish the facts to the mutual satisfaction of the Company's and the Union's medical examiners concerned, the examiners of the Company and the Union will agree upon a suitable outside doctor whose independent judgement will be determining on the facts at issue. The expense of the outside consultant will be borne equally by the Company and the Union.

23. SAFE GEAR & WORKING EQUIPMENT

The Company will continue its policy of exercising due diligence in furnishing safe gear and working equipment and in making every reasonable effort to provide safe working conditions on board vessels at all times. All vessels of the Company will be properly secured for sea before leaving a safe harbor. The Company will provide protective working gear when employees are paint spraying; handling chemicals; or cleaning chemical tanks.

24. QUARTERS CLEANLINESS

All quarters are to be kept free from vermin and clean insofar as possible and all unlicensed personnel are to cooperate actively in this respect. All quarters of the unlicensed personnel shall be painted out as required on ship's time.

25. QUARTERS VENTILATION

All quarters and messrooms shall be adequately ventilated and sufficient fans to secure such ventilation

shall be installed. Such spaces are to be suitably screened. All personnel are required to turn off all fans when quarters and messrooms are unoccupied.

26. LOCKERS

A sufficient number of lockers shall be installed or renewed so that each employee shall have one full length locker with sufficient space to stow properly a reasonable amount of gear and personal effects. Separate storage space provided for oilskins and boots will not be used for other purposes.

27. BEDDING

The following items shall be supplied to the unlicensed personnel:

a. A suitable number of clean blankets;

b. Bedspreads, white sheets, and pillow cases shall be changed once each week; and

c. Face and bath towels which shall be changed twice weekly. No clean linens or towels shall be furnished until soiled linens and towels have been returned to the place designated by the Steward.

Mattresses or pillows filled with straw or excelsior shall not be supplied and mattresses and pillows shall be replaced promptly with new ones when conditions warrant it.

28. SANITARY WORK

In the interest of the welfare of the crew, the Union agrees that those men in each department whose regular duty it is to clean washrooms and toilets shall be required to do sanitary work in the aforementioned places during Sunday mornings and during holiday mornings without additional pay but in no case shall such required work exceed twenty minutes.

29. COFFEE TIME

Fifteen minutes will be allowed in the forenoon and fifteen minutes in the afternoon for coffee time. In addition, the ordinary seamen on the 12:00 to 4:00 watch will be given sufficient time off before coffee time to make coffee in the afternoon.

30. MEAL HOURS

Meal hours shall be as follows:

Breakfast	7:30 a.m. to 8:30 a.m.
Dinner	11:30 a.m. to 12:30 p.m.
Supper	5:00 p.m. to 6:00 p.m.

These hours may be varied not to exceed one hour either way. One unbroken hour is to be allowed for each meal. When a meal is served early, all employees will eat early.

31. REFRIGERATORS

Refrigerators shall be furnished for night lunches for unlicensed personnel.

32. BREAD AND MILK

For vessels running coastwise, on arrival at discharge ports, sufficient bread if available, will be supplied for a 48 hour period. Thirty (30) gallons of fresh milk shall be provided at each end of the voyage but at intervals of not less than five (5) days. Forty (40) gallons will be supplied those vessels trading to Albany or Boston and ports north of Boston.

33. DISHES

All dishes provided shall be crockery ware.

34. HOLIDAYS

The Company agrees to recognize the following as holidays:

(1) New Year's Day
(2) Lincoln's Birthday
(3) Washington's Birthday
(4) Memorial Day
(5) Independence Day
(6) Labor Day
(7) Veterans' Day
(8) Thanksgiving Day
(9) Christmas Day

In the event that any of the above mentioned holidays fall on Saturday or Sunday, whether in port or at sea, the following Monday shall be observed as such holiday.

35. SHIPYARD LIVING CONDITIONS

The Master will have all unlicensed employees notified by 1700 hours each day that work is scheduled to be done between midnight and 0800 which will interfere with sleeping and offer quarters allowance as specified in Section 123 to all who wish to avail themselves of this offer.

Should unplanned work occur between the hours of midnight and 0800 which prevents the employee from sleeping the quarters allowance as specified in Section 123 shall be paid to each employee who was on board when such work was performed and such employee may avail himself of the right to go ashore at that time and be paid the quarters allowance.

ARTICLE II
DEPARTMENTAL WORKING RULES

DECK DEPARTMENT

* 36. DAY WORKERS' HOURS

The scheduled hours of work for dayworkers shall be from 8 am to 12 noon and 1 pm to 5 pm. Work performed outside these scheduled hours and all work performed on Saturdays, Sundays and Holidays shall be compensated

at the rate of one hour pay at the contract overtime rate for each hour of work.

On Sundays and Holidays and between the hours of 5 pm and 6 am at sea and on Saturdays, Sundays, and Holidays in port only work necessary for the safe navigation and normal operation of the vessel shall be required.

* 37. WATCHSTANDING HOURS

At sea or in port, employees shall stand regular watches as required by the Master. On Saturdays, Sundays and Holidays watches and work performed off watch shall be compensated at the rate of one hour pay at the contract overtime rate for each such hour of watch or work off watch.

On Sundays and Holidays at sea and on Saturdays, Sundays and Holidays in port or between the hours of 5 pm and 6 am only work essential for the navigation, cargo handling, dispatch or uninterrupted operation of the vessel shall be performed. No chipping, scaling or maintenance of a noisy nature shall be performed between 6 am and 8 am.

38. WHEEL DUTY

When practicable, men on wheel duty shall not be required to stand more than two hours wheel watch in any four-hour watch. This shall not include the regular advancing or retarding of the ship's clock, unless the clock retards one-half hour or more, in which latter case the two men standing wheel watches on this watch shall split the extra time equally.

39. PAINTING, SCALING, ETC.

It shall be the duty of the Deck Department to maintain the good condition by washing paint work, scaling and painting as may be required, the pumproom above and including the floor plates on ship's time. They shall paint the cargo pumps and shellac the decks in the Steward Department quarters.

40. STORES HANDLING

Members of the deck department will handle stores and supplies for deck, engine, and steward's departments from the side of the ship, or on the dock to the ship and steward's stores to storerooms and iceboxes.

41. SANITARY WORK

The employees shall be required to clean their toilets, washrooms and quarters daily on ship's time. The cleaning of toilet and washrooms shall be done by the ordinary seaman.

ENGINE DEPARTMENT

* 42. DAY WORKERS' HOURS

The scheduled hours of work for dayworkers shall be from 8 am to 12 noon and 1 pm to 5 pm. Work performed outside these scheduled hours and all work performed on Saturdays, Sundays and Holidays shall be compensated at the rate of one hour pay at the contract overtime rate for each hour of work.

On Sundays and Holidays and between the hours of 5 pm and 6 am at sea and on Saturdays, Sundays, and Holidays in port only work necessary for the safe navigation and normal operation of the vessel shall be required.

* 43. WATCHSTANDING HOURS

At sea or in port, employees shall stand regular watches as required by the Master. On Saturdays, Sundays and Holidays watches and work performed off watch shall be compensated at the rate of one hour pay at the contract overtime rate for each such hour of watch or work off watch.

On Sundays and Holidays at sea and on Saturdays, Sundays and Holidays in port or between the hours of 5 pm and 6 am only work essential for the navigation, cargo handling, dispatch or uninterrupted operation of the vessel shall be performed. No chipping, scaling or maintenance of a noisy nature shall be performed between 6 am and 8 am.

44. PUMPMAN AT SEA

a. The scheduled hours of work for pumpmen shall be 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m. For all work performed outside of scheduled hours, he shall be paid at the regular overtime rate.

b. Pumpman's duties shall consist of handling fuel oil, ballast, discharging cargo, and tank cleaning equipment and all work necessary for the maintenance and operation of cargo pumps, auxiliaries, general cargo lines and all deck machinery. He shall not be required to chip paint, scale paint, polish brass, soogee, or do any work that is not considered maintenance for the machinery under his care. He shall not be required to make heavy installations where this work is customarily done by shore gangs; this, however, shall not be construed to apply to renewals and replacements of wornout equipment.

45. PUMPMAN IN PORT

The pumpman's normal working hours in port shall be eight per day between 8:00 a.m. and 5:00 p.m. weekdays. He may be required to perform work in excess of these hours but for such work he shall be paid at the overtime rate. He will not be required to take bunkers in port.

46. MACHINIST

The machinist, when carried, shall assist in the general repair, upkeep and reasonable installation of ship's machinery and equipment as directed by the engineer in charge. He shall not be required to make heavy installations where this work is customarily done by shore gangs; this, however, shall not be construed to apply to renewals and replacements of wornout equipment. He shall not be required to do any painting or chipping or scaling of paintwork or polishing brass work.

47. OILERS AND/OR UNLICENSED JUNIOR ENGINEERS AT SEA

* Oilers and/or unlicensed junior engineers shall assist by performing general repair, upkeep, and reasonable installation of machinery and equipment and assist in the operations of the plant, as directed by the engineer in charge. They are to keep floor plates wiped in the immediate vicinity of moving machinery located in the engine room spaces and shall also maintain the station assigned to them on the operating platform provided such maintenance does not exceed one hour daily. They shall not be required to paint, chip, soogee, polish brass, or scale on watch.

48. OILER AND/OR UNLICENSED JUNIOR ENGINEER IN PORT

Duties shall be the same as at sea; however, when watches are broken, the hours of work shall be eight each day between midnight and midnight. They shall not be required to paint, chip, soogee, polish brass, or scale.

49. FIREMEN, WHEN CARRIED, AT SEA

On watch they shall tend fires, clean burners, fuel oil strainers, and keep their stations clean. They shall not be required to chip, paint, scale, soogee, or polish brass; however, they shall clean any loose oil that may result from their work. They are not to tend water unless the checks and gauges are in the fireroom in which case they will be required to tend water and shall be rated as firemen-watertenders. Firemen-watertenders shall remain in sight of the boiler gauge glasses at all times unless properly relieved. Firemen, when required, shall assist the engineer in blowing tubes when blowers are located in the fireroom.

50. FIREMEN, WHEN CARRIED, IN PORT

When watches are not broken, their duties shall be the same as at sea. When watches are broken, their hours shall be the same as day workers and their duties shall consist of assisting in the general repair and maintenance work as directed by the engineer in charge.

51. ENGINEROOM MAINTENANCE MAN

The engineroom maintenance man, when carried, shall assist in the general repair, upkeep and inventory of equipment, stores, and spaces as directed by the engineer in charge and his hours shall be those of a day worker.

52. WIPERS, AT SEA AND IN PORT

They shall be required to do the general cleaning and upkeep in the engine department spaces and assist in any repair work as directed by the engineer in charge. Wipers shall also keep the unlicensed engine department toilet, washrooms, and quarters clean on ship's time, and two hours daily shall be allowed for this sanitary work.

STEWARDS DEPARTMENT

53. GENERAL DUTIES

Duties of the Steward's Department shall consist of the following general provisions, as and when requested. The hours of the Steward's Department shall be as specified in Section 62. If employees are requested to and do work in excess of eight hours on any day, or outside the specified hours, in the performance of these duties overtime will be paid.

53. CHIEF STEWARD

The Chief Steward shall be recognized as the head of the Steward's Department; he shall report to the Master and shall direct the work of the personnel employed in the Steward's Department. The Chief Steward likewise may do any work in the preparation of meals or other work which he may deem necessary for efficient operation of his department.

Duties:

1. Supervising the Steward's Department including the service of meals.

2. Responsible for receiving, checking, issuing and proper care of all stores and equipment belonging to Steward's Department.

3. Maintains necessary company records, takes full and accurate inventory of provisions at the end of each month.

4. Submits voyage requisitions and requisitions for a period of 30 days or more, including inventory as required by Beaumont office.

55. CHIEF COOK

Duties:

1. In charge of galley and its operation under Chief Steward's direction.

2. Assists Chief Steward in the preparation of menus.

3. Butcher all meats, fish and poultry.

4. Cook and serve all meals.

5. In the absence of Steward, carry out his responsibilities.

56. SECOND COOK

Duties: Work under the direction of the Steward, performing the following duties:

1. Preparation and baking of all breads, pies, desserts, cakes, hot breads, including dumplings, stewed fruits, pastries, etc.

2. Cook all vegetables and make salads and prepare night lunches.

3. Assist Steward in proper stowage of refrigerated spaces when stores are received and proper care of same. Also handling of dry and sundry stores.

4. Assist in upkeep of cleanliness in galley, including ranges, ventilators, refrigerator, paint work in galley, working tables, drawers and use of insecticides. Clean and safe upkeep of all galley equipment, and assist Steward to make ice cream.

5. In the absence of the Chief Cook, he will assume the Chief Cook's responsibilities. The Second Cook is to care for the interior of the bake ovens and keep same clean. He is to assist in serving all meals.

57. GALLEYMAN

Duties:

1. Keep ventilators and acreens clean.

2. Wash all galley utensils and clean galley, including cleaning of tables, drawers, and washing of paint work. Clean butcher shop and butcher's utensils; use of insecticides.

3. Clean refrigerator boxes and assist in the proper care of fruits and vegetables.

4. Clean and prepare all vegetables and prepare all cold drinks.

5. Draw galley linen and supplies from linen locker and return soiled linen to linen locker.

6. Draw stores for galley from refrigerated spaces and storerooms upon daily requisition approved by Chief Steward.

7. Remove trash and garbage from galley and clean garbage cans.

* 8. Assist in handling food stores and dry and sundry stores.

9. Keep stairways adjacent to storerooms and refrigerators in clean, safe condition.

10. Clean storerooms and stock stores.

58. OFFICERS' SALOON MESS

Duties:

1. Serve all meals in Officers' messroom.

2. Prepare all fruits for table, such as citrus fruits or melons.

3. Responsible for defrosting and cleaning of saloon refrigerator, cleanliness of saloon gear and equipment and safety and upkeep of same.

4. Wash dishes, glassware and silverware.

5. Report to Chief Steward necessary replacements of gear.

6. Set up Officers' table and clear away after each meal, scrubbing pantry deck after breakfast and sweeping up after each meal.

7. Draw necessary linen for Officers' messroom and return soiled linen to locker.

8. Draw stores and utensils on requisition approved by Chief Steward.

9. Dispose of trash and garbage, emptying and scrubbing out garbage cans after each meal.

10. Set out night lunches.

11. Assist in handling stores and linen.

12. Clean brass, wash paint work in his section. Use insecticides.

13. Maintain and clean 3rd Assistant Engineer's and Steward's rooms.

14. Sweep passageway on starboard side.

59. CREW MESSMAN

Duties:

1. Serve all meals in crew messroom.

2. Prepare all fruits for table, such as citrus fruits or melons.

3. Responsible for defrosting and cleaning crew messroom refrigerator, cleanliness of crew messgear and equipment and safety and upkeep of same.

4. Wash dishes, glassware and silverware and messroom gear.

5. Report to Chief Steward necessary replacement for all gear.

6. Set up and clear away after each meal, scrubbing and sweeping up after each meal.

7. Draw necessary linen for crew messroom and return soiled linen to linen locker.

8. Draw stores and utensils on requisition approved by Chief Steward.

9. Dispose of trash and garbage, emptying and scrubbing out garbage cans after each meal.

10. Set out night lunches.

11. Assist in handling of stores and linen.

12. Clean brass and paint work in his section; use insecticides.

13. Wax and polish decks.

14. Maintain and clean crew's lounge.

15. Sweep passageway on port side.

60. UTILITYMAN

One or more employees of the steward's department not engaged in the preparing and serving of food shall be rated as utilitymen.

Duties:

1. Maintain and clean all Officers' living quarters and all spare rooms.

2. To wash all paint work, clean and wax Officers' lounges, polish all brightwork, and to perform general cleaning work.

3. To clean refrigerator rooms, clean the toilets and bathrooms except those of firemen, oilers and sailors.

4. Draw all necessary linen from Chief Steward and return all soiled linen to locker, help count and bag linen.

5. They may be assigned to carry a food tray to the bridge, serve meals to pilot, Master and sick employees.

61. GENERAL

* No overtime will be paid for the preparation and serving of regular meals within the regular hours; if meal times are varied working hours will be adjusted accordingly.

Members of the Steward's Department shall not be required to prepare and serve other than three regular meals. They shall prepare night lunches for the watches.

Members of the Steward's Department shall place stores and supplies in the storeroom and refrigerator, and shall assist, when required, in carrying stores from the main deck to the storeroom.

* Whenever the personnel on any vessel, exclusive of Steward Department personnel, exceeds 29 two utilitymen will be carried.

No member of the Steward's Department shall be required to serve coffee or meals in the engine room, nor shall they be required to enter the engine room at any time. Upon order of the Master they may be required to serve coffee or meals on the bridge

* 62. WORKING HOURS

The working hours of Steward Department personnel shall be as follows:

Chief Steward - eight hours a day in a spread between 6:15 a.m. and 6:15 p.m.

Chief Cook - 7:00 a.m. to 12:30 p.m. and 3:30 p.m. to 6:00 p.m.

Second Cook - 6:15 a.m. to 10:00 a.m., 11:00 a.m. to 1:00 p.m. and from 4:00 p.m. to 6:15 p.m.

Galleyman - 6:15 a.m. to 10:00 a.m., 11:30 a.m. to 1:30 p.m. and from 4:00 p.m. to 6:15 p.m.

Officers Saloon Mess - 6:30 a.m. to 10:00 a.m. 11:00 a.m. to 1:15 p.m. and from 4:00 p.m. to 6:15 p.m.

Crew Messman - 6:30 a.m. to 10:00 a.m., 11:00 a.m. to 1:15 p.m. and from 4:00 p.m. to 6:15 p.m.

Utilityman - 6:30 a.m. to 10:00 a.m., 11:00 a.m. to 1:15 p.m. and from 4:00 p.m. to 6:15 p.m.

63. CHIPPING, PAINTING, SCALING

Members of the steward's department shall not be required to do chipping, scraping, or painting, nor shall they wash paintwork requiring staging.

64. CARRYING STORES AND LINEN

Members of the steward's department shall not be required to carry stores or linen from shore to vessel or from vessel to shore.

65. REFUSE COMPARTMENTS

In port all refuse compartments shall be located convenient to the galley.

Effective August 1, 1971

	Starting Rate	Six Months In Co.	One Year In Co.	Two Years In Co.	Three Years In Co.	Five Years In Co.	Ten Years In Co.
Bos'n	$702.00	$712.35	$724.00	$746.01	$768.01	$790.03	$812.02
Able Seaman	538.95	546.45	555.21	571.47	587.72	603.98	620.24
Ordinary Seaman	423.01	429.27	436.76	450.53	464.28	478.04	491.80
AB/DM	591.99	601.06	610.10	628.24	646.36	664.49	682.60
OS/DM	479.24	487.01	496.07	512.90	529.74	546.56	563.40
Pumpman/ Machinist	730.27	740.61	752.27	774.29	796.16	818.19	840.30
ERM	673.71	682.78	693.12	712.57	731.99	751.41	770.82
Auto Oiler	631.76	640.51	648.00	665.52	683.02	700.53	718.03
Oiler	606.98	615.73	623.24	640.75	658.25	675.76	693.26
FWT	538.95	546.45	555.21	571.47	587.72	603.98	620.24
Wiper	479.24	487.01	496.07	512.90	529.74	546.56	563.40
Steward	757.19	768.44	779.70	802.21	824.72	847.23	869.74
Chief Cook	652.05	660.80	670.80	689.56	708.31	727.09	745.84
Second Cook	559.43	566.93	575.69	591.95	608.21	624.47	640.72
Galleyman	437.88	444.13	451.63	465.39	479.15	492.90	506.66
Messman/ Utilityman	423.01	429.27	436.76	450.53	464.28	478.04	491.80

A monthly payment at the rate of $7.50 as a clothing allowance to each of the unlicensed personnel is included in the foregoing wage schedule.

Effective August 1, 1970

	Starting Rate	Six Months In Co.	One Year In Co.	Two Years In Co.	Three Years In Co.	Five Years In Co.	Ten Years In Co.
Bos'n	$662.26	$672.03	$683.02	$703.78	$724.54	$745.31	$766.06
Able Seaman	508.44	515.52	523.78	539.12	554.45	569.79	585.13
Ordinary Seaman	399.07	404.97	412.04	425.03	438.00	450.98	463.96
AB/DM	558.48	567.04	575.57	592.68	609.77	626.88	643.96
OS/DM	452.11	459.44	467.99	483.87	499.75	515.62	531.51
Pumpman/ Machinist	688.93	698.69	709.69	730.46	751.09	771.88	792.74
ERM	635.58	644.13	653.89	672.24	690.56	708.88	727.19
Auto Oiler	596.00	604.25	611.32	627.85	644.36	660.88	677.39
Oiler	572.62	580.88	587.96	604.48	620.99	637.51	654.02
FWT	508.44	515.52	523.78	539.12	554.45	569.79	585.13
Wiper	452.11	459.44	467.99	483.87	499.75	515.62	531.51
Steward	714.33	724.94	735.57	756.80	778.04	799.27	820.51
Chief Cook	615.14	623.40	632.83	650.53	668.22	685.93	703.62
2nd Cook	527.76	534.84	543.10	558.44	573.78	589.12	604.45
Galleyman	413.09	418.99	426.07	439.05	452.03	465.00	477.98
Messman/ Utilityman	399.07	404.97	412.04	425.03	438.00	450.98	463.96

A monthly payment at the rate of $7.50 as a clothing allowance to each of the unlicensed personnel is included in the foregoing wage schedule.

ARTICLE III
WAGES

*66. MONTHLY WAGE SCHEDULE

Effective November 1, 1969

	Starting Rate	Six Months In Co.	One Year In Co.	Two Years In Co.	Three Years In Co.	Five Years In Co.	Ten Years In Co.
Bos'n	$624.77	$633.99	$644.36	$663.94	$683.53	$703.12	$722.70
Able Seaman	479.66	486.34	494.13	508.60	523.07	537.54	552.01
Ordinary Seaman	376.48	382.05	388.72	400.97	413.21	425.45	437.70
AB/DM	526.87	534.94	542.99	559.13	575.25	591.40	607.51
OS/DM	426.52	433.43	441.50	456.48	471.46	486.43	501.42
Pumpman/ Machinist	649.93	659.14	669.52	689.11	708.58	728.19	747.87
ERM	599.60	607.67	616.88	634.19	651.47	668.75	686.03
Auto Oiler	562.26	570.05	576.72	592.31	607.89	623.47	639.05
Oiler	540.21	548.00	554.68	570.26	585.84	601.42	617.00
FWT	479.66	486.34	494.13	508.60	523.07	537.54	552.01
Wiper	426.52	433.43	441.50	456.48	471.46	486.43	501.42
Steward	673.90	683.91	693.93	713.96	734.00	754.03	774.07
Chief Cook	580.32	588.11	597.01	613.71	630.40	647.10	663.79
2nd Cook	497.89	504.57	512.36	526.83	541.30	555.77	570.24
Galleyman	389.71	395.27	401.95	414.20	426.44	438.68	450.92
Messman/ Utilityman	376.48	382.05	388.72	400.97	413.21	425.45	437.70

A monthly payment at the rate of $7.50 as a clothing allowance to each of the unlicensed personnel is included in the foregoing wage schedule.

67. WAGES ON PROMOTION OR DEMOTION

If during the voyage, a member of the unlicensed personnel is assigned to another rating higher than his own, he shall receive the higher rate of pay during such assignment and his hours shall become the hours of the new assignment. If he is assigned to a lower rating through no fault of his own, there shall be no reduction in wages or overtime rate for the remainder of the voyage and his hours shall become the hours of the new assignment.

ARTICLE IV
GENERAL OVERTIME PROVISIONS

* 68. OVERTIME POLICY

The Company will continue its policy of paying cash overtime at the contract rate for authorized work performed in excess of eight hours per day and/or 40 hours per week, at sea and in port. The contract overtime rate shall be as follows:

* 69. OVERTIME RATE

The overtime rate applicable to all authorized work performed in excess of eight hours per day and/or 40 hours per week, at sea and in port shall be:

	Effective Nov. 1, 1969 Per Hour	Effective Aug. 1,1970 Per Hour	Effective Aug. 1,1971 Per Hour
Bos'n	$ 4.51	$ 5.25	$ 6.08
Able Seaman	3.46	4.03	4.67
Ordinary Seaman	2.71	3.16	3.66
AB/DM	3.80	4.43	5.13
OS/DM	3.08	3.59	4.16
Pumpman/Machinist	4.69	5.47	6.32
ERM	4.33	5.05	5.84
Auto Oiler	4.05	4.73	5.48
Oiler	3.90	4.54	5.25
FWT	3.46	4.03	4.67
Wiper	3.08	3.59	4.16
Steward	4.86	5.67	6.56
Chief Cook	4.19	4.88	5.64
2nd Cook	3.59	4.19	4.85
Galleyman	2.81	3.27	3.80
Messman/Utilityman	2.71	3.16	3.66

70. PENALTY TIME POLICY

The Company shall pay Penalty time payments in cash under circumstances to be specified in this agreement. Penalty time shall be paid at the rate of one hour at the contract penalty time rate for each hour of work performed under the specified circumstances. The contract penalty time rates for the term of the agreement shall be as follows:

Effective November 1, 1969, the penalty rates shall be:

1. Where the starting rate as of 11/1/69 is $624.77, or more a month $2.86

2. Where the starting rate as of 11/1/69 is $479.66, or more a month but less than $624.77 $2.80

3. Where the starting rate as of 11/1/69 is $376.48, or more a month but less than $479.66 $2.18

Work to be compensated at the Penalty Rate shall be as designated in the following sections in the Agreement:

79. Linen Change
84. Cleaning Vent Trunks
86. Shifting Ship
87. Carrying Stores
90. Washing Clothes
91. Garbage
99. Working Aloft
102. Washing Clothes
104. Serving Extra Persons
106. Extra Lunches or Meals
107. Stowing Stores
108. Cleaning Meat and Chill Boxes
109. Cooking Ashore
115. Port Overtime - Watchstanders
116. Port Overtime - Dayworkers
117. Port Overtime - Stewards Department
118. Port Overtime - Albany Trade
119. Port Overtime - Boston/Quincy Trade

71. TANK CLEANING POLICY

The Company will continue its policy of paying cash compensation for Tank Cleaning and certain other types of work as specified in the agreement. Such work shall be compensated in cash at the contract Tank Cleaning rate.

Effective November 1, 1969, and for the term of the agreement, the Tank Cleaning rate shall be:

1. On watch weekdays between 0800 and 1700 $2.80
2. Off watch weekdays between 0800 and 1700 $4.20
3. On or off watch weekdays between 1700 and 0800 $4.20
4. On or off watch Saturdays,Sundays and Holidays $5.60

Work to be compensated at the Tank Cleaning rate shall be as designated in the following sections of the Agreement:

81. Spray Painting
83. Tank and Bilge Cleaning, Strainer Boxes, Major Spills
88. Shifting Butterworth Machines
89. Chipping and Scaling in Tank Trunks
93. Longshore Work
94. Explosives
95. Boiler and Water tanks
96. Tank Tops
97. Work Below Floor Plates
98. Cleaning Condensers

72. SATURDAYS, SUNDAYS, AND HOLIDAYS

Overtime shall be paid for all work done and watches stood on Saturdays, Sundays, and holidays at sea and in port.

73. MASTER'S AUTHORITY

Overtime shall in no case be worked without the prior authorization of the Master or person acting by authority of the Master.

*74. DRILLS, INSPECTIONS,SAFETY

Wherever practical, routine lifeboat and other emergency drills shall be held on Monday through Friday between the hours of 0800 and 1630.

Except for special drills required by a government official, overtime shall be paid to all men off duty or off watch for lifeboat and emergency drills held before 0800 and after 1630 on Monday through Friday and on Saturdays, Sundays and Holidays.

No overtime shall be paid for work in addition to the regular schedule in connection with inspections or examinations conducted by a government official, or emergency work required for the safety of the passengers, crew, vessel, cargo, another vessel in distress, or the saving of life. This paragraph shall not apply to annual inspection of the vessel.

75. OVERTIME COMMENCES

One member of the watch on deck shall be designated to call out the watch below and he shall be instructed to begin such call out one-half hour before the time required for the watch below to be on deck. He shall announce the time required to be on deck when calling the watch below and overtime shall commence fifteen minutes prior to the time given when called provided the employee is on deck at that time, otherwise overtime shall commence at the actual time the employee reports for duty and shall continue until the employee is released.

* 76. COMPUTING OVERTIME, PENALTY TIME AND TANK CLEANING TIME

Where overtime, penalty time or tank cleaning time worked is less than one hour, overtime, penalty time or tank cleaning time for one full hour shall be paid. Where overtime, penalty time or tank cleaning time worked exceeds one hour, the overtime, penalty time or tank cleaning time performed thereafter shall be paid in one-half hour periods, a fractional part of such period to count as one-half hour.

77. SIGNING OVERTIME

When overtime is worked the employee concerned shall sign the overtime sheet as soon as possible after completion of the work, which shall also be countersigned by the department head authorizing the work. If there is any question regarding the amount of overtime allowed, he shall at once follow the grievance procedure.

78. EXCHANGING OVERTIME

Except upon bona fide request of individual members of the unlicensed personnel, there shall under no circumstances be any exchange of time off for overtime worked or overtime worked for time off.

79. LINEN CHANGE

* One hour of penalty time will be paid to any man who does not get a clean linen change once each week.

* 80. NO PYRAMIDING OF PAYMENTS

Whenever overtime or penalty time or tank cleaning time are payable under one or more provisions of the agreement for the same work or the same period of time, the payments shall not be additive, i.e. there shall be no double payments or combinations of overtime, penalty time and tank cleaning time. However, under these circumstances the highest applicable rate shall be paid.

* 81. SPRAY PAINTING

When members of the unlicensed personnel are required to handle spray guns in painting, two men shall be used and each man shall be paid his tank cleaning rate for this work.

82. STORING SATURDAY, SUNDAY, HOLIDAY, OVERTIME HOURS

All members of the unlicensed personnel required to stand by to take stores on Saturdays, Sundays and holidays, and outside of their regular hours of work, shall receive overtime pay from the time they are required to stand by until released by the officer in charge. Men required to stand by may be released by the officer in charge at any time for any reason, but they shall receive overtime for at least one hour, if they have actually commenced to stand by prior to the order of release. While awaiting arrival of stores, men will be required to work.

83. TANK AND BILGE CLEANING, STRAINER BOXES, MAJOR SPILLS

Men entering tanks or cofferdams for installation work, repair work, or cleaning, or actually engaged in the removal of sludge, either on deck or in tanks, or men doing any of the aforementioned work in pump room bilges, or chipping, painting, or scraping in said pump room bilges, shall be paid the tank cleaning rates specified in

* Section 71 except for the Bosun who shall in all instances
* receive the equivalent of the highest rate of tank cleaning time being paid to any member of the crew with whom he is working. Cleaning spills on deck shall also constitute
* tank cleaning time under these provisions. A spill shall be considered to be a tank overflow, rupture of hose or pipe or a gasket blowout.

While engaged in the above work, no other overtime or
* penalty time shall be paid. The cleaning of strainer boxes is not to be considered bilge work.

84. CLEANING VENT TRUNKS

When employees are required to enter vent trunks beyond the cowling, mushroom or bulkhead for the purpose of painting, chipping, scaling or repairs they shall receive
* penalty time at their regular rate.

DECK DEPARTMENT

85. DOCKING AND UNDOCKING

All the time required for docking and undocking shall constitute overtime for all members of the deck department who perform this work outside their scheduled hours of duty.

86. SHIFTING SHIP

When the shifting of a ship takes less than five (5) hours between berths, docks or ports, all members of the deck department required to be on board shall be paid
* penalty time for all time off duty.

87. CARRYING STORES

In the event that ship's stores are not delivered within
* a thirty foot radius of the ship's side, penalty time shall be paid to members of the deck department so engaged in carrying stores to the thirty foot radius.

88. SHIFTING BUTTERWORTH MACHINES

Three men shall be used for the shifting of Butterworth machines. When this work is done between the hours of 5 p.m. and 8 a.m. at sea, three men shall be used from
* watch below and paid their regular tank cleaning rate. When this work is done in port, men on watch may be used
* and they shall be paid at their regular tank cleaning rate.

89. CHIPPING AND SCALING IN TANK TRUNKS

* Tank cleaning time shall be paid at the tank cleaning rates as specified in Section 71 to members of the deck
* department engaged in chipping or scaling in the tank's trunks.

* 90. WASHING CLOTHES

Four hours of penalty time shall be paid for washing clothes to each member of the Deck Department who is engaged in cleaning black oil tanks, black oil spills, or engaged in repairs in black oil tanks or enters unwashed clean oil tanks to effect repairs or remove sludge, syphon, or wipe down said tanks, for each passage in which this work is done.

91. GARBAGE

When members of the deck department are required to handle or dump large accumulations of garbage, they shall
* be paid at the penalty time rate.

92. 0400 - 0800 WATCH BREAKFAST HOUR

When members of the deck department are performing regularly scheduled overtime work which calls for assistance from the members of the 0400 to 0800 watch after their regular 0400 to 0800 watch has been completed this watch shall receive one-half hour for breakfast from 0800 to 0830 and they shall turn to at 0830 and overtime shall commence from 0800.

93. LONGSHORE WORK

In ports where there are no longshoremen available, members of the deck department may be required to drive winches for handling dry cargo, or handle dry cargo, and
* for such work they shall be paid the tank cleaning rate in addition to their regular monthly wages.

94. EXPLOSIVES

When required to work explosive cargo, members of the
* deck department shall be paid for such work at the tank cleaning rate. For the purpose of this Agreement, explosives shall consist of the following items: black powder, blasting caps, detonating caps, loaded bombs, dynamite, and T.N.T.. This does not apply to ammunition for the Armed Guard unless it is handled solely by the crew.

ENGINE DEPARTMENT

95. BOILER AND WATER TANKS

Members of the unlicensed personnel of the engine department when cleaning oil and domestic fresh water tanks, working in boilers on steam or fire side and main gear case shall receive the regular tank cleaning rate. Domestic water tanks shall include distilled, drinking, double bottoms, after peak, and deaerator surge tanks.

96. TANK TOPS

When members of the engine department are engaged in chipping, painting, or scaling tank tops located beneath the engine room or fireroom floor plates they shall be
* paid tank cleaning time at the regular rate.

* 97. WORK BELOW FLOOR PLATES

When members of the engine department are engaged in performing actual repair work to equipment located beneath the engine room and/or fire room floor plates, or chipping, painting, or scaling below the fireroom floor plates, they shall be paid the regular tank cleaning rate.

98. CLEANING CONDENSERS

When the inspection plates are removed from the condenser water boxes and members of the engine department are required to enter the condenser water boxes for cleaning, painting or scaling the inside of this equipment, they
* shall be paid tank cleaning time at the regular tank cleaning rates as prescribed in Section 71.

99. WORKING ALOFT

* All engine room personnel shall be paid penalty time whenever they are working aloft on the masts or king-posts.

100. SUPPER RELIEF

* One hour of overtime will be paid to each individual in the engine department when required to provide supper relief for the 4:00 to 8:00 watch.

101. OVERTIME PAYMENTS THROUGH MEAL HOURS

Overtime payment shall not be broken during the limited time allowed for the meal when engine room personnel are working pre-scheduled overtime and are released from such overtime work to partake of a meal.

When members of the engine department are performing regularly scheduled overtime work which calls for the assistance of the members of the 0400 to 0800 watch after their regular 0400 to 0800 watch has been completed this watch shall receive one-half hour for breakfast from 0800 to 0830, and they shall turn to at 0830 and overtime shall commence from 0800.

102. WASHING CLOTHES

Members of the engine department who are required to enter black oil tanks for the purpose of affecting repairs will
* be compensated for washing clothes as follows: No penalty time payment for less than two hours work in tanks; two
* hours penalty time for two to four hours work in tanks and
* four hours penalty time for more than four hours work in tanks.

103. RIGGING

Simple rigging, lashing, or hoisting in connection with engine room work shall be performed by engine room personnel. Complicated rigging, lashing, or hoisting, which requires skills above this shall be provided by competent persons other than engine personnel.

STEWARD DEPARTMENT

104. SERVING EXTRA PERSONS

* Penalty time shall be paid to members of the Steward Department, not exceeding five men, involved in the preparation and serving of extra meals under the following conditions:

* a. One hour of penalty time shall be paid to each of these employees for serving three to five persons in excess of the number of persons served in any one messroom.

* b. Two hours of penalty time shall be paid to each of these employees for serving six or more persons in excess of the number of persons served in any one messroom.

* c. Three hours of penalty time shall be paid to each of these employees for serving shore personnel required to be on board when transiting the Panama or Suez Canal.

105. ILLNESS

When a man is sick aboard vessel, his wages are not to be split. Work over eight (8) hours necessitated by the illness of a member of the steward department is to be compensated by overtime.

106. EXTRA LUNCHES OR MEALS

If on the order of the Master or officer in charge, lunches are served in addition to the three meals already provided for, or meals for members of the port staff are served at
* other than the regular hours, one hour's penalty time shall be paid to each man actually engaged in preparing and serving such lunches.

107. STOWING STORES

When members of the steward's department are required to stow stores away requiring more than fifteen minutes,
* they shall be paid penalty time in addition to their
* regular wages at the penalty time rate unless the vessel is not feeding aboard and steward's department personnel are not engaged in their regular duties.

108. CLEANING MEAT AND CHILL BOXES

When members of the steward's department are required to clean meat and chill boxes prior to receiving stores for a period of 90 or more days they shall be paid for such
* work at their regular penalty time rate.

109. COOKING ASHORE

When required to cook ashore, four members of the steward's department shall be assigned to carry food and utensils from and to the vessel, each of them to be compensated
* at the rate of one hour's penalty time for each meal served.

110. HOLIDAY MEALS

The Company recognizes that work in excess of eight hours per day is normally required in the preparation and serving of holidays meals on Thanksgiving, Christmas, and New Year's Day and is in accord with the payment of overtime for the extra work required in these instances.

111. CLEANING EXTRA ROOMS

The Company recognizes that there will be instances when persons not attached to the vessel will be using extra rooms when in port. When the cleaning of these rooms requires work in excess of 8 hours the members of the steward's department who do such work shall be entitled to overtime payment at the regular overtime payment rate for such work.

112. CLEANING GALLEY RANGES

Two members of the steward's department shall be required to clean galley ranges and when this work is done outside regular hours overtime shall be paid at their regular rate.

ARTICLE V
PORT TIME

113. PORT TIME DEFINED

a. Port time shall not commence in the case of a vessel anchoring because of fog or other impediments to navigation, awaiting tides or pratique.

b. Port time shall commence when a vessel anchors for the purpose of handling cargo, cleaning tanks, scheduled repairs, or when it is securely moored to a dock.

c. Port time shall commence when a vessel anchors provided the vessel is detained at anchor for more than twenty-four (24) hours awaiting a berth irrespective of whether pratique is granted, or undergoing emergency repairs. Launch service will be provided, when available, if permitted by government regulations.

d. Port time as described above shall apply when a vessel enters port under governmental direction provided the vessel remains in port for more than twenty-four (24) hours.

e. When moving vessel to another berth, dock or inland port, port time shall cease when standby is given, provided however, the period of moving vessel exceeds five (5) hours.

f. Port time shall cease when the order for standby is given at dock or anchorage, and vessel is proceeding to sea.

g. Every effort shall be made by the Company to post the sailing time as accurately as possible.

NOTE: Port time shall not apply to this section in any foreign rendezvous port while the vessel is at anchorage and shore liberty is restricted by governmental order.

ARTICLE VI
PORT OVERTIME

114. STANDBY STAFF

An employee assigned to the Standby Staff shall be kept on pay and subsistence at the rate of $1.20 ($1.60 in the case of Stewards) per day until he is assigned to a vessel. While awaiting assignment he may be given temporary duties to perform aboard a vessel.

When such duties are performed in excess of eight hours per day and on Saturdays, Sundays and holidays he shall receive overtime at the contract rate. Employees ordered by the Company to standby at a point more than 50 miles from their homes shall be given full subsistence.

115. PORT OVERTIME - WATCHSTANDERS

* When a vessel enters a port for the purpose of handling cargo penalty time shall be paid to a maximum of twelve hours (three successive watches) commencing at the end of the hour in which the vessel is finished with engines.

116. PORT OVERTIME - DAY WORKERS

* When a vessel enters a port for the purpose of handling cargo penalty time shall be paid to a maximum of four hours for normal work performed commencing at the end of the hour in which the vessel is finished with engines.

117. PORT OVERTIME - STEWARD'S

* When a vessel enters a port for the purpose of handling cargo penalty time shall be paid to each member of the steward's department for normal duties performed to a

maximum of four hours commencing at the end of the hour in which the vessel is finished with engines except when three meals are served between 0615 and 1815 six hours shall be paid.

* NOTE: When a vessel is in port on a Saturday and/or a Sunday and continues in port on Monday, penalty time as
* described in Sections 115, 116, and 117 will commence at 0000 hours Monday. This interpretation shall also apply when the vessel is in port on a holiday and continues in port the following day.

118. PORT OVERTIME - ALBANY TRADE

* Penalty time equivalent to the provisions of Sections 115, 116, and 117 shall be paid at Port Mobil from finished with engines to standby and at Tompkinsville Anchorage for the entire anchored period for vessels in the Port Mobil/ Albany or Tompkinsville Anchorage/Newburgh/Albany trade.
* Penalty time under this section shall not apply at Newburgh.
* Port penalty time shall apply at Albany commencing from finished with engines.

119. PORT OVERTIME - BOSTON/QUINCY TRADE

* Penalty time, equivalent to the provisions of Sections 115, 116, and 117 shall be paid for vessels in the Boston/ Quincy trade and shall apply at Boston and also at Quincy.

ARTICLE VII
TRANSPORTATION AND SUBSISTENCE

120. TRAVELING FOR EMPLOYMENT

* When traveling in the course of employment from one port to another, unlicensed personnel shall be paid regular wages while enroute and shall be provided with necessary transportation and subsistence except where subsistence is included with transportation. Subsistence shall be at the following rates:

Breakfast	$2.50
Dinner	3.50
Supper	4.50

When traveling overnight, a berth shall be provided.

Economy air transportation will be provided when available or reimbursed on basis of receipt, for travel in excess of 150 miles.

Transportation expense when presented for reimbursement must be supported by receipts except for cab fares of less than $5.00.

121. TRANSPORTATION - LEFT ASHORE

When an employee is left ashore at any port and when such employee would ordinarily be entitled to transportation under the law, the Company shall forthwith provide transportation back to the port of signing on and may utilize its own vessels for that purpose.

122. TRANSFER COMPANY CONVENIENCE

When an employee is transferred for Company convenience, he shall be provided with transportation and subsistence as
* itemized in Section 120. An employee assigned to the standby staff as a result of such transfer who is required to stand by at a point more than 50 miles from his home shall be entitled to subsistence as itemized in
* Section 123.

*123. NORMAL SUBSISTENCE

Subsistence where required in this Agreement or when employees are attached to a vessel and room and board are not furnished shall be paid for at the rates set forth herein unless specifically stated otherwise:

a.	In lieu of breakfast	$2.50
b.	In lieu of dinner	3.50
c.	In lieu of supper	4.50
d.	In lieu of quarters	10.50

ARTICLE VIII
VACATION-PAID LEAVE

*124. VACATION-PAID LEAVE RATE

Effective November 1, 1969, employees shall be entitled to vacation-paid leave at the rate of 104 days for 261 days of active duty aboard vessels or on standby as a result of transfer for Company convenience.

Effective August 1, 1970, employees shall be entitled to vacation-paid leave at the rate of 110 days for 255 days of active duty aboard vessels or on standby as a result of transfer for Company convenience.

125. OPERATING NECESSITY

It is understood by the Union that the Company can grant vacation-paid leave only at such time and places as do not interfere with the operating necessities of the service, and when employees are available to provide such relief. When an employee cannot be relieved at his normal time the Company will give him an explanation of the reasons therefore in writing.

126. SCHEDULING OF VACATION-PAID LEAVE

The vacation-paid leave plan will be administered in general on the basis of three months of active service on board vessels followed by a period of shore leave with pay. Employees shall be available for assignment at any time after 6 a.m. of the fourth day before expiration of vacation-paid leave. It is understood that an employee will be given a definite job assignment on the first day he is due for recall and should such job not materialize, he shall then be placed on standby until reassigned. Adjustment of Recalled Days shall be made in the next vacation-paid leave period and shall be in addition to the earned vacation-paid leave. Vacation-paid leave periods shall be at least thirty-four (34) days.

An employee going on paid leave may not return to active duty aboard vessels until one-half the time earned shall have been taken. If an employee has requested to be returned to active duty aboard vessels upon completion of one-half of his paid leave, the Company will endeavor to place him. Should the employee desire to have such unused portion of his paid leave added without pay to his next paid leave period, he shall so notify the Company in writing not later than the fourth day of such paid leave period. It is understood that there shall be no pyramiding of paid leave under this provision.

127. VACATION-PAID LEAVE AT TERMINATION

If employment is terminated after one (1) month of active service aboard vessels, payment for accrued vacation-paid leave shall be made; if terminated for any reason with less than one (1) month's service aboard vessels, no vacation-paid leave payment shall be made.

128. LEAVE OF ABSENCE

Employees reporting back after end of an approved leave of absence if not assigned within 5 days will be placed on pay and subsistence at the rate of $1.20 ($1.60 in the case of Stewards) while awaiting assignment to vessels and may be given temporary duties to perform.

This Agreement shall supersede and cancel all previous Agreements with respect to wages, hours of employment, working rules and other conditions of employment now in effect between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers this 18th day of November, 1969.

SOCONY VACUUM TANKER MEN'S ASSOCIATION
LOCAL 8-801 OIL, CHEMICAL and ATOMIC
WORKERS INTERNATIONAL UNION, AFL-CIO

Francis G. Avery
Donald H. Sanhueza
John D. Perrio
Theodore Nason

Maxwell M. Lackey
International Representative

MOBIL OIL CORPORATION
MARINE TRANSPORTATION DEPT.
GULF-EAST COAST OPERATIONS

John T. Knepper
L. A. Papich
W. J. Shanaghan

Supreme Court of the United States

NO. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS,
INTERNATIONAL UNION, AFL-CIO, ET AL.,

Petitioners,

v.

MOBIL OIL CORPORATION, ETC.

ORDER ALLOWING CERTIORARI. Filed October 6, 1975

The petition herein for a writ of certiorari of the United States Court of Appeals for the Fifth Circuit is granted.

"PLAINTIFF'S EXHIBIT 14"

DATE August 3, 1971

TO

C.C.

W. H. Taylor
Dallas

OCAW DUES

Please draw a check in the amount of $2,253.00 payable to the OCAW-IU, Maritime Local 8-801 and mail with the covering letter in the self-addressed envelope which is enclosed.

The check must be received by the Union not later than the 15th of the month.

Please debit Account No. 8-0309-041.

John T. Knepper

nd

encl.

August 3, 1971

cc: J. H. Gray
W. H. Taylor
OCAW General 3.70

Oil, Chemical and Atomic Workers
International Union
Maritime Local Number 8-801
Room 605
1 Beekman Street
New York, New York 10038

Gentlemen:

Enclosed is our check in the amount of $2,253.00 representing dues and initiation fees for all OCAW members with authorized dues deductions in force on July 31, 1971.

Dues from	261 members @ $8.00 ea.	= $2,088.00
Initiation fees from	11 members (new) @ $15 ea.	= 165.00
		$2,253.00

During July the following additions and deletions have been made to the list of OCAW members having dues deduction authorizations on file with us:

Additions (11)

J. Bourne (new)	G. Lyle (new)	G. Stinson (new)
D. W. Dickey (new)	R. O'Connor (new)	R. Vail (new)
H. Green (new)	R. Skiladz (new)	M. Whitworth (new)
J. Guidry (new)	J. Smith (new)	

Deletions (11)

V. Bonsaint (to lic.)	W. Hammett	A. Papazis
P. Breslin	G. Hill	A. Raham
D. Del Rosario	J. Hughes (to lic.)	A. Witte
N. Ferrer	J. Miller	

We have on this date 272 dues deduction authorizations from OCAW members.

Very truly yours,

J. T. Knepper, Manager
Gulf-East Coast Operations

nd

Supreme Court, U. S.
FILED
MAY 2 1975
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term, 1974

No. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO
AND
MARITIME LOCAL NO. 8-801 OF
OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO,
Petitioners,

v.

MOBIL OIL CORPORATION,
MARINE TRANSPORTATION DEPARTMENT,
GULF-EAST COAST OPERATIONS,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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STECK-WARLICK

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In the

Supreme Court of the United States

October Term, 1974

No. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO

AND

MARITIME LOCAL NO. 8-801 OF OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO,

Petitioners,

v.

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals *en banc* is reported at 504 F. 2d 272. The opinion of the three-judge panel is reported at 483 F. 2d 603. The District Court's Findings of

Fact, Conclusions of Law and Judgment are reported at 81 LRRM 2051 and at 1972 A.M.C. 1712. The opinions are reproduced in the Petition for a Writ of Certiorari. (Apps. A, B and D.)[1]

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTIONS PRESENTED

1. Whether the court below, in holding that the Texas right to work laws apply to the employment relationship under the collective bargaining agreement between Petitioners and Respondent, properly weighed the various elements of contact such relationship has with the State of Texas in terms of § 14(b) of the Taft-Hartley Act.

2. Whether the court below properly refused to defer to the National Labor Relations Board.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are cited and reproduced in the Petition. (App. C.)

STATEMENT

The collective bargaining agreement between Petitioners and Respondent, Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations,[2] contains the following agency shop clause:

> "2. UNION SECURITY
>
> b. For the duration of the Agreement all employees hired shall, as a condition of employment, become

[1] References designated as "App....." are to Appendices of the Petition. References designated as "R. App....." are to the Appendix to this Brief.

[2] Petitioners have erroneously denominated Respondent as "Mobil Oil Corporation" in the Petition.

> members of the Union and/or in the alternative pay the regular union dues and initiation fees within thirty-one days from the employment date."

During the term of the agreement, Respondent discovered that agency shop clauses violate Texas right to work laws and sought to conform the agreement to Texas law by deleting the illegal provision. *See* Tex. Att'y. Gen. Op. No. WW-1018 (1961) (R. App., pp. A1-A7, *infra*). However, Petitioners rejected Respondent's request and instead advised all covered employees that failure to make payment of regular dues and fees would result in dismissal. Respondent thereupon filed this action seeking a declaratory judgment that the agency shop clause violated Texas right to work laws.[3]

At trial, Respondent introduced evidence demonstrating the close contact this employment relationship has with Texas. Since 1962 Respondent's headquarters have been located in Beaumont, Jefferson County, Texas. (App. D, pp. 1d-2d.) From its headquarters, Respondent administers the agreement with Petitioners. (App. D, p. 4d.) All grievances filed pursuant to the agreement are submitted to and considered by Respondent's manager at Beaumont. (App. D, p. 3d.) All checkoffs of union dues required by the agreement are forwarded to Petitioners from Texas. (App. D, p. 3d.) All personnel records are maintained at Respondent's Beaumont headquarters. (App. A, p. 3a; App. D, p. 3d.) All payroll checks are written and mailed from Texas. (App. A, p. 3a.) Cash handed Respondent's employees aboard ship is placed on board in Texas. (App. D, p. 3d.)

[3] While § 8(a)(3), 29 U.S.C. § 158(a)(3) (1970), of the Labor Management Relations Act permits union security agreements within certain limits, § 14(b), 29 U.S.C. § 164(b) (1970), of the Labor Management Relations Act allows state right to work laws prohibiting such agreements. Section 14(b) provides:

> "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

All state and federal taxes withheld from personnel employed on Respondent's tankers are remitted from Texas. (App. D, p. 3d.) Texas is the only state collecting unemployment compensation on all personnel employed aboard Respondent's tankers; Texas does so regardless of the designation of home address or shipping port. (App. D, p. 2d.)

Respondent employs 289 seafaring employees (App. D, p. 2d.); 152 of them have requested Respondent to list Beaumont, Texas, as their shipping port. (App. D, p. 3d.) One hundred twenty-three of Respondent's seafaring employees have reported to Respondent that Texas is their state of residence. (App. D, p. 2d-3d.) Sixty percent of all applicants for employment make their initial applications in Texas (App. A, p. 4a.); all final employment decisions are made at Respondent's Beaumont headquarters. (App. D, p. 3d.) All final decisions to terminate employees are made in Beaumont. (App. A, p. 4a.)

Since many voyages begin or end at Texas ports, seamen employed on Respondent's tankers are regularly present in Texas. (App. D, p. 3d-4d.) At all times some of Respondent's seamen are present in Texas, either on board Respondent's tankers or on paid vacation. (App. D, p. 4d.)

Respondent's periodic employee news letter, which is entitled *Mobil Mariner*, is printed, published and datelined in Beaumont, Texas, and it is mailed from that city. Respondent issues to newly employed seamen a booklet entitled WELCOME ABOARD! which is written and published in Texas and which recites that the mailing address of such employees will be "John Doe, S/S 'Name of Ship', Mobil Oil Corporation, Gulf-East Coast Operations, P. O. Box 3444, Beaumont, Texas 77704" while employed by Respondent.

On the basis of these facts, the District Court concluded that Texas right to work laws applied to the agreement between Petitioners and Respondent and that the agency shop clause in the agreement was therefore void and unenforceable. A three-judge panel of the Court of Appeals reversed,

stating that the District Court "failed to give proper consideration to the most important factor in the case, that is, the situs of the work performance of the covered employees." (App. B, p. 11b.) On rehearing *en banc* the judgment of the three-judge panel was reversed and that of the District Court affirmed.

The opinion of the *en banc* court concluded that the contacts between the employment relationship and Texas "demonstrate that the state of Texas is intimately involved with the employment relationship." (App. A, p. 4a.) The court then framed the question presented for review:

> "Whether the agency shop clause in this collective bargaining agreement is valid or not depends entirely upon whether the Texas right to work law applies to *this* employment relationship. In determining whether the Texas law is applicable, we must decide whether it was the intent of Congress in writing section 14(b) to permit a state to apply its right to work law *to an employment relationship which has contacts with the state as described by the evidence presented to the district court.*" (App. A, 6a; footnote omitted; emphasis added.)

The court determined that the contacts between this employment relationship and Texas, when viewed on a multidimensional level in terms of the actions of Congress in enacting § 14(b) and in amending certain provisions of the Railway Labor Act hereinafter discussed as well as the relative interests of jurisdictions other than Texas, warranted the application of Texas right to work laws to the relationship. Section 14(b) reserved to the states the right to prohibit compulsory unionism, including the agency shop. *Retail Clerks International Association v. Schermerhorn*, 373 U.S. 746 (1963). In authorizing action by the states, the concern of Congress was with the hiring process, not with job situs. Section 14(b) looks to the "execution or application" of union security agreements in hiring rather than to the situs of the job to be performed.

The court below concluded that a state may apply its right to work law to an employment relationship whenever it has a significant interest in the employment relationship; the court also concluded that the contacts between this employment relationship and Texas predominated over those with any other state and gave Texas a significant interest in applying its right to work laws. Indeed, allowing Texas to apply its right to work laws to this employment relationship would further national policy.

The *en banc* court rejected the view of the three-judge panel that "the predominance of Texas contacts with *this employment relationship* was not decisive" and "that the determinative factor in deciding whether the Texas law is applicable is job situs." (App. A, p. 5a; emphasis added.) Furthermore, should it refuse to allow Texas to apply its right to work laws to this employment relationship, the court believed it would be carving out a special exemption for the maritime industry, for when Congress meant to authorize union security agreements regardless of any state law, it expressly did so by means of specific statutory language. *See* Railway Labor Act, 45 U.S.C. § 151 *et seq.* (1970).

Finally, the *en banc* court affirmed the decision of the three-judge panel that the District Court properly declined to defer consideration of the issues in this case to the National Labor Relations Board.

ARGUMENT

I. The decision of the court below on the issue of the applicability of Texas right to work laws does not present a question of substantial importance appropriate for review by this Court.

The opinion of the *en banc* court below was carefully limited to the particular employment relationship existing between Petitioners and Respondent, as manifested by its narrowly circumscribed conclusion "that it was not the intent of the Congress to prevent Texas from applying its right to work law *in the context of this employment relationship.*"

(App. A, p. 7a; emphasis added.) This case is, therefore, not appropriate for consideration by this Court.

The decision of the court below resulted from the weighing of the various contacts between this particular employment relationship and Texas. The difference among the members of the *en banc* court is merely the weight to be accorded the various contacts. The reweighing of these factors is not a matter requiring the attention of this Court.

Because the decision of the *en banc* court depended on the weighing of the various contacts between the state of Texas and this employment relationship, it is of highly limited applicability in the context of other employment relationships. Thus the assertion by Petitioners that this case is important because it will apply to 10,000 men and 500 ships is patently incorrect.[4] Similarly, the Petitioners' assertion that the decision of the court below is important because it gives precedence to the laws of right to work states over those states without such laws, ignores the fact that the court below looked to the contacts between the state of Texas and this particular employment relationship. In another case, using the same approach, the laws of a state that permitted union security agreements would be applied if, as here, it were demonstrated that sufficient contacts existed between that state and the particular employment

[4] Petitioners would have this Court pursue a phantom when they speak of 10,000 men on 500 ships. As the courts below took note, this is not a "hiring hall" case. Typically, a maritime employee over a period of years will ship out of many different hiring halls and sail aboard the vessels of many different companies, with no particular allegiance to (nor permanent benefits from) any one employer. See *NLRB v. Seafarers International Union*, 496 F. 2d 1363 (5th Cir. 1974). Not so in the case at bar, where there is a *permanent* workforce which is employed by a Texas employer and which enjoys until retirement age the advantages of a lasting relationship. Between cruises the employee in this case is not sitting in a union hiring hall hoping to get another job; the employee remains an employee of Respondent, draws a salary from Texas, and enjoys a vacation while awaiting word from Texas as to the next vessel assignment.

relationship involved. This case therefore presents no question of significance warranting consideration by this Court.[5]

II. The decision of the court below on the issue of the applicability of Texas right to work laws is not in conflict with prior decisions of this Court.

The decision below does not conflict with this Court's decision in *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963). There this Court held that an employer in a state *not* having a right to work law commits an unfair labor practice by refusing to bargain over inclusion of an agency shop clause in a collective bargaining agreement. Nothing in the decision in *this* case is addressed to an employer's bargaining obligation; it deals only with the legality of one particular clause. Further, contrary to Petitioners' assertion, the decision below did not demonstrate a preference for right to work laws that would trench upon the right of unions to bargain for agency shop clauses. Rather, the decision of the court below to apply the laws of Texas to invalidate this particular agency shop clause was based on an analysis of the various contacts between Texas and this particular employment relationship. Lastly, the decision below is consistent with *Retail Clerks International Association v. Schermerhorn*, 373 U.S. 746 (1963), decided the same day as *General Motors*, where this Court held that the states, in the exercise of the power permitted them under § 14(b), could declare agency shop clauses invalid. The court below merely gave effect to a state statute exercising the authority recognized in *Schermerhorn*. For these reasons, the decision of the court below does not conflict with any decision of this Court.

III. The decision of the court below on the issue of the applicability of Texas right to work laws is correct on the merits.

The decision below is mandated by § 14(b). The court considered all the various contacts between this employment

[5] In fact, Petitioners apparently considered this case of little "significance" for they failed to file a brief with the court below in the *en banc* proceedings although the opportunity was made available for them to do so.

relationship and Texas in determining that Texas right to work laws applied to invalidate the agency shop clause in the agreement between Respondent and Petitioners. The court refused to accord decisive weight in this case to job situs. The court's weighing of all aspects of the employment relationship is required by the literal words and legislative history of § 14(b). Section 14(b) states that the Labor Management Relations Act "shall not be construed as authorizing the *execution or application* of agreements requiring membership in a labor organization in any State * * * in which such *execution or application* is prohibited by state law * * *" (emphasis added). Concentration on one particular aspect of the employment relationship ignores the fact that union security agreements are applied in diverse factual circumstances involving many different aspects of the employment relationship. As the court below pointed out, the underlying legislative history supports this interpretation of § 14(b). (App. A, pp. 13a-14a.)

Moreover, the approach urged by Petitioners would result in exempting seafaring employees from § 14(b). All provisions of the Labor Management Relations Act apply to seafaring employees; nothing in § 14(b) indicates it was not to be applied to seafaring employees. When Congress intended to prevent the application of state right to work laws to employees covered by the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (1970), it did so by explicit statutory language.[6]

[6] Section 2, Eleventh, 45 U.S.C. § 152(11) (1970), of the Railway Labor Act provides:

> Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted —
>
> (a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is later, all employees shall become members of the labor organization representing their craft or class * * *.

Adopting the reasoning of Petitioners would require the judicial creation of an exception to § 14(b) that Congress declined to make. The exceptional status occupied by seamen under maritime law does not require a different result.[7]

The decision below does not sanction forum shopping or headquarters manipulation. The approach utilized in the decision below negates the possibility of any such abuses since the court looked to all aspects of the employment relationship in deciding to apply Texas law; headquarters location alone was not determinative. There is not a scintilla of evidence that Respondent's headquarters move to Beaumont in 1962 was designed to obtain the benefit of the Texas right to work laws or that Respondent arbitrarily structured its operations for that purpose. As was said in the decision below:

> "[W]here an employer has artificially constructed its operations or its hiring process in such a way that the substance of its activities occurs in and the greatest part of its labor force comes from a non-right to work jurisdiction while a pro forma final hiring decision is made in a right to work state, application of the state's right to work law would be contrary to the national labor policy. *We are not faced with that circumstance here.*" (App. A, p. 18a; emphasis added)

Finally, the decision below does not conflict with the decisions of the National Labor Relations Board in *Western Electric Co., Inc.*, 84 NLRB No. 111 (1949); *Northland Greyhound Lines, Inc.*, 80 NLRB No. 60 (1949); and *Giant Food Shopping Center, Inc.*, 77 NLRB No. 79 (1948). In those cases the question presented was not whether some state law applied, but which law of more than one state applied.[8]

For these reasons the decision below is indisputably correct and need not be reviewed by this Court.

IV. The decision of the court below on the issue of deferral to the National Labor Relations Board is not appropriate for consideration by this Court.

Deferral to the National Labor Relations Board, contrary to the position of Petitioners, is unwarranted in this case, which involves the construction, interpretation and validity of the agency shop clause of a collective bargaining agreement. Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a) (1970), expressly vests this function in the courts; and this Court has approved the exercise by courts of the jurisdiction conferred by § 301 even though the relief sought could also be obtained in an unfair labor practice proceeding. See *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 513 (1962), where this Court stated that "Congress deliberately chose to leave the enforcement of collective agreements to the 'usual processes of the law.'"[9]

While deferral to an administrative agency has been held proper to provide the courts with the benefit of greater ad-

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[7] Moreover, in the recent case of *Cady v. Twin Rivers Towing Company*, 486 F. 2d 1335 (3d Cir. 1973), the Third Circuit made the following comments with respect to the "exceptional" status of seamen in actions brought under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a) (1970):

> "We are not aware of any cases to support the proposition that seamen suing under collective bargaining agreements are accorded special rights. On the contrary, principles developed under Section 301(a) have been held to apply to seamen in ways no different from other workers."

Accord, Suissa v. American Export Lines, 367 F. Supp. 1113 (S.D.N.Y. 1973), aff'd ..... F. 2d ..... (2d Cir. 1975).

[8] These cases were only concerned with the determination of the appropriate unit and not with what state law was to be applied in determining the validity of a union security agreement. Moreover, such cases were decided *more than twenty years ago under a statute long since repealed.*

[9] Even if the case were deferred to the Board, there is no guarantee an unfair labor practice charge would issue. The General Counsel of the Board has broad discretion to refuse to issue an unfair labor practice complaint (a discretion which is ordinarily unreviewable) and in such event the jurisdiction of a federal court would be ousted. See *Augspurger v. Brotherhood of Locomotive Engineers*, 510 F. 2d 853 (8th Cir. 1975).

ministrative expertise and in order to promote uniform development of the law, see, e.g., *Southwestern Sugar & Molasses Co. v. River Terminals Corp.*, 360 U.S. 411 (1959), deferral is unwarranted here. The Board possesses no greater expertise than the courts in the interpretation of collective bargaining agreements or statutory provisions; both functions are performed daily by the courts. Moreover, even Chief Judge Brown, who filed a dissenting opinion in the Court below, was hard-put to find a labor case to support his view in favor of deferral to the National Labor Relations Board. His championship of "primary jurisdiction" by citation of the ICC and FPC cases requires great strain, when it is recalled that these agencies, unlike the National Labor Relations Board, possess comparatively enormous power and reach of function. They initiate investigations, undertake studies, and habitually on their own volition regulate many of the affairs of industry in this country. Conversely, the NLRB moves only after it has been energized; a party files a charge that an unfair labor practice has been committed, or a party files a petition seeking an election in a group of employees. It is small wonder that, as acknowledged by Petitioners, only 2 out of the 14 federal appellate judges who have heard this case believed that it would have been proper to defer to the Board. And lastly, uniformity of national labor law is not endangered by the decision of the court below. As explained above, the court was applying Texas law only in the context of *this* particular employment relationship.

The refusal of the court below is thus consistent with decisions of this Court and unquestionably sound. Further, even assuming *arguendo* that such refusal was erroneous, the decision not to defer is a matter of minor significance inasmuch as the decision of the court below is limited to the facts of this case, and review of such decision by this Court would be inappropriate.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JAMES W. HAMBRIGHT,
JOHN G. TUCKER,
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THEOPHIL C. KAMMHOLZ,
WARREN H. GREENE, JR.,

Counsel for Respondent.

Dated: May 2, 1975.

APPENDIX

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

March 14, 1961

HONORABLE DAVID W. RATLIFF, *Chairman*
Labor and Management Relations Committee
Senate of the State of Texas
Austin, Texas

Opinion No. WW-1018

Re: Whether the "agency shop" clause in labor union contracts contravenes Sec. 8a, Article 5154a; Sec. 2, Art. 5207a; and Section 1, Art. 5154g; V.A.T.C.S.

Dear Senator Ratliff:

The Senate Committee on Labor and Management Relations has requested an opinion as follows:

> "Does the 'agency shop' clause contravene existing statutes of the State of Texas by requiring that employees covered by the clause, who fail voluntarily to acquire or maintain membership in the union, as a condition of employment, pay to the union each month a service charge or fee as a contribution toward the administration of the agreement and the representation of such employees?"

Your letter points out that many out-of-state companies have negotiated collective bargaining agreements with various unions containing "agency shop" clauses, which companies have branch plants in Texas, and that some Texas corporations are being pressed to sign contracts containing this clause. Your Committee is interested in this problem to see if corrective legislation is required.

The standard "agency shop" clause in a contract between the union and management requires each employee who fails voluntarily to acquire and maintain membership in the union, as a condition of employment, to pay to the union each month a service charge as a contribution toward the administration of the contract and the representation of such employees. Such service charge is usually in an amount equal to the union's regular initiation fee and a month's dues for the first month after the contract goes into effect, and for each month thereafter in an amount equal to the regular monthly dues.

Section 8a of Article 5154a, Vernon's Civil Statutes, reads as follows:

> "*It shall be unlawful for any labor union,* labor organizer, any officer, any agent, or representative or any member of any labor union to *collect, receive or demand, directly or indirectly, any fee, assessment, or sum of money whatsoever,* as a work permit or *as a condition for the privilege to work from any person not a member of the union;* provided, however, this shall not prevent the collection of initiation fees as above stated." (Emphasis added).

Section 2 of Article 5207a, Vernon's Civil Statutes, reads as follows:

> "No person shall be denied employment on account of membership or nonmembership in a labor union."

Section 1 of Article 5154g, Vernon's Civil Statutes, reads as follows:

> "It is hereby declared to be the public policy of the State of Texas that *the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union* or labor organization *and that in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion.*"

It is clear from a reading of the foregoing statutes that it was the intention of the Legislature to make membership or non-membership in a labor union a voluntary matter with each individual worker, and to protect him in his right to continue to work at his job, regardless of his decision. Section 1 of Article 5154a, V.C.S., reads in part as follows:

> "Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. *The working man, unionist, or non-unionist, must be protected. The right to work is the right to live.* (Emphasis added).

The Agency Shop Contract is of fairly recent origin. Heretofore, the three usual types of union security have been: the Closed Shop; the Union Shop; and the Maintenance of Membership Arrangement.

Under the *Closed Shop* contract the employer can hire only union members, and is forced to discharge employees failing to maintain their membership in good standing in the union.

Under the *Union Shop* contract the employer can hire without regard to union membership, but the employee must become a union member within a specified time and thereafter maintain his membership in good standing.

The *Maintenance of Membership Arrangement* allows the employer to hire without regard to union membership or non-membership, but during a specified limited time at the beginning of the contract or of being employed, as the case might be, every employee must decide whether or not he will join or remain a member of the union. Those who choose to join must remain members until the next so-called "escape period" which occurs at the beginning of each contract renewal. However, those employees electing not to join the union are free to remain as non-union employees for the life of the existing collective bargaining agreement.

If it be argued that the Agency Contract does not require any person to become a member of a labor union as a prerequisite to obtaining or holding a job, then let it be noted that Sec. 8a of Article 5154a, *supra*, prohibits the collection of any fee, assessment or sum or money whatsoever as a condition for the privilege to work from any person not a member of the union. Indiana, a right-to-work state, has held that the agency shop is lawful under *its* laws, but did so on the ground that the Indiana right-to-work law is penal in nature, and must, therefore, be strictly construed. There being nothing in the Indiana statute which specifically prohibits the agency contract, the court held that under a strict construction of the penal law the agency shop contract could not be considered to be covered by the Indiana act by implication. *Meade Electric Co. v. Hagberg*, 159 N.E. 2d 408 (Ind. App., 1959).

While the Agency Shop Contract as a type of labor union contract was not in vogue at the time of the enactment of Article 5154a, the Legislature certainly intended to cover this type of contract when it enacted Section 8a of Article 5154a, by whatever name it came to be called in later years. But aside from Article 5154a, the agency shop contract violates Section 2 of Article 5207a and Section 1 of Article 5154g, since the required payment of the service charge is tantamount to compulsory membership in a labor union, and upon failure to pay the service charge, results in loss of the non-union worker's job, if the contract is enforced. The payment of the service charge makes the non-union member subject to all of the pecuniary liabilities of the union member, without any corresponding privileges. He is, in effect, a disenfranchised union member against his will.

In *A. F. of L. v. Mann*, 188 S.W. 2d 276 (Civ. App., 1945) the Court was called on to construe Article 5154a. In construing Section 8a of Art. 5154a, the Court referred to closed shop contracts, and the arguments made by appellants that the fee charged against non-union workers was a part of the cost to such union in obtaining and maintaining union conditions and servicing the employees on the job.

Indicative of the intent of the Court to apply Section 8a to more than the closed shop contract is the following language at page 285:

> "* * * enforced collection by unions from non-union employees for such benefits as a right to work is another matter, Carried to its logical conclusion, the same reasoning would justify such exactions on any job wherein unions are involved, *whether under closed-shop contracts or not;* and ultimately could lead to the same policy toward all labor, on the ground that all labor had benefited from union efforts. Thus the public interest is so affected by the practice prohibited in Sec. 8a, and the potential abuses and injustices to laborers who are not members of an organized union, whether from choice or inability to become so, that the Legislature was warranted in forbidding such practice. (Emphasis added).

If any Texas statutes affecting labor do not apply in any given situation, it will be because the Congress has preempted the field with its own legislation with regard to the particular facts of the case. Certain acts and conduct, such as peaceful picketing of an employer's place of business in an industry affecting interstate commerce, has been held by the Supreme Court of Texas, in *Ex Parte Twedell*, 309 S.W. 2d 834 (1958), to lie outside the jurisdiction of our state courts. But membership in a union as a prerequisite to obtaining or holding a job is a different matter. Congress has made an exemption in favor of the states in the Labor Management Relations Act, 1947, in 29 U.S.C.A. Sec. 164 (b), which reads as follows:

> "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

In *Finney et al v. Hawkins*, 54 S.E. 2d 872, the Supreme Court of Appeals of Virginia was called upon to construe

Virginia's "Right-to-Work" law, Section 1 of which reads as follows:

> "It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

The Virginia court stated in the *Finney* case at page 877:

> "As pointed out in the state court decisions in State v. Whitaker, (45 S.E. 2d 860) * * *, and Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co., 149 Neb. 507, 31 N.W. 2d 477, recent federal legislation makes clear that Congress did not intend to interfere with the right of States to prohibit agreements requiring membership in a labor organization as a condition of employment. * * * 29 U.S.C.A. Sec. 164 (b)."
>
> "* * * * *
>
> "There was evidence to be found in the acts of many States and of the Federal Congress to support the view that discrimination against employees because they did or did not belong to a union was against the public interest and should not be allowed. Laws merely regulating the union obviously would not accomplish that purpose. Basically, agreements involving such discrimination are hostile to our free enterprise system and to individual liberty of choice and action. Legislation that protects the citizen in his freedom to disagree and to decline an association which a majority would thrust upon him on the ground that it knows what is best for him, does no violence to the spirit of our fundamental law. The protection of minorities is the boast of our institutions and a basis of their asserted superiority over totalitarian regimes. The results have demonstrated the value of the democratic process."

In response to your question, we hold that the "Agency Shop" clause in a contract between a labor union and management contravenes and is in violation of Section 8a of Article 5154a; Section 2 of Article 5207a; and Section 1 of Article 5154g of Vernon's Civil Statutes.

SUMMARY

The "Agency Shop" clause in a contract between a labor union and management violates Sec. 8a, Art. 5154a; Sec. 2, Art. 5207a; and Sec. 1, Art. 5154g, V.C.S.

Yours very truly,

WILL WILSON
Attorney General of Texas

By /s/ RILEY EUGENE FLETCHER
Riley Eugene Fletcher
Assistant

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL

By: Morgan Nesbitt

A-8

THE ATTORNEY GENERAL OF TEXAS

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January 20, 1972

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Beaumont, Texas 77701

Re: Attorney General Opinion
No. WW-1018

Dear Jim:

Regarding the inquiry contained in your letter of January 19 with reference to the above Opinion, please be advised that this office has not written any other Opinion on the particular subject involved in WW-1018. For this reason, it is our feeling that this Opinion is still in full force and effect.

It might be pertinent, however, to say that if a railroad is involved wherein the Federal Railroad Labor Act controls, under the decision of *International Association of Machinists v. Sandsberry*, 277 S.W. 2d 776 (Tex. Civ. App. 1955), aff. 156 T. 340, 295 S.W. 2d 412, cert. den. 353 U.S. 918, our Opinion would not be of any force or effect as against the Federal Railroad Labor Act.

It is always a pleasure for me, as well as for this office, to be of service to you and your fine firm. Please do not hesitate to call on us if we can help in any way.

Kind personal regards and every good wish, I am

Sincerely yours,

/s/ NOLA WHITE
Nola White
First Assistant

Supreme Court, U. S.
FILED
SEP 10 1975
MICHAEL RODAK, JR., CLERK

No. 74-1254

In the Supreme Court of the United States

OCTOBER TERM, 1975

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., PETITIONERS

v.

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

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v.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is filed in response to the Court's invitation of May 27, 1975.[1]

[1] The questions presented are (Pet. 2):

1. Whether under Section 14(b) of the Taft-Hartley Act and the Texas "Right to Work" laws a union security provision in the form of an agency shop clause may apply to seamen who work exclusively aboard oceangoing vessels which move between Texas and non-Texas ports.

2. Whether the courts below should have withheld declaratory judgment in favor of referral to the National Labor Relations Board for the initial decision in accommodating Sections 14(b), 8(a)(3) and the Texas "Right to Work" laws.

STATEMENT

Mobil Oil Corporation is a New York corporation and its top corporate offices are in New York (App. 171).[2] The Gulf-East Coast Operations division of Mobil's Marine Transportation Department has its offices in Beaumont, Texas; it operates eight ocean-going American flag tankers (App. 57–58). The tankers, which transport petroleum products, typically move from Texas to Atlantic coast ports, making two round trips per month. On any one voyage a ship is at sea for approximately four days and spends approximately 18 hours in port, loading or unloading (App. 153–156). Some of the tankers also move in foreign commerce on voyages lasting as long as six months (App. 157–158).

The 289 unlicensed seamen who work on the tankers are represented for collective bargaining purposes by Maritime Local 8–801 of the Oil, Chemical and Atomic Workers International Union (Pet. App. 1d, 2d). Sixty percent of the seamen seek employment at Mobil's Texas office and 40 percent seek employment at its New York office (App. 90).[3] Some of the seamen ship out of Atlantic ports, while others ship out of Gulf ports.[4] Personnel and payroll records are

[2] "App." refers to the appendix to the briefs in the court of appeals.

[3] 123 employees list Texas as their residence, 60 New York, 21 New Jersey, 16 Florida, 13 Louisiana, 10 Maine, and 10 Rhode Island; the listed residences of the remainder are scattered in 16 other States (App. 71).

[4] The seamen designate home ports for purposes of computing transportation reimbursement for traveling between the port where they board or leave the ship and their residences. The home port is not necessarily the port where they actually board or leave the ship. 152 designate Beaumont as home port; 107 New York City, and 30 Providence, Rhode Island (App. 69, 71, 167–168; Pet. App. 3d).

maintained by the Beaumont office (App. 73). Union dues checkoffs from those employees who have authorized them are made in Beaumont and mailed to the Union in New York (App. 223). Texas administers unemployment compensation on behalf of all the seamen (App. 117). Seamen's claims for maintenance and cure, health, accident and other such benefits are handled in New York (App. 79).

The seamen perform all of their work aboard ship; they work for 85 days and then have 37 days of paid shore leave (App. 247, 256). The seamen are paid, in cash, on board the ship; they are paid every other trip, usually in a northern port (App. 73, 77, 165).[5] The first four steps of the contract grievance procedure take place on board ship. The next step takes place in Beaumont; arbitration, should it be necessary, takes place in New York (App. 183–185).

In 1969, Mobil and the Union negotiated in New York a collective bargaining agreement covering the seamen who work on Mobil's tankers (Pet. App. 2d). The agreement contained an agency shop clause, which required all employees to become "members of the union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date" (Pet. 6).

[5] However, a seaman can request that a check be sent to his bank or his wife. In such event, the master will send a request to the Company's payroll office in Dallas (App. 73–74).

Mobil brought this suit under Section 301 of the Labor Management Relations Act, 61 Stat. 156, 29 U.S.C. 185, seeking a declaratory judgment that the agency shop clause violated the Texas right to work laws (Pet. App. 2c). The district court, finding that the seamen's Texas contacts outweighed those with any other State, held that the Texas right to work laws applied to the agreement and that the agency shop clause was consequently invalid (Pet. App. D).

A divided panel of the court of appeals reversed (Pet. App. B). Drawing on *Western Electric Co., Inc.*, 84 NLRB 1019, and *Northland Greyhound Lines, Inc.*, 80 NLRB 288, the panel held that "the situs of the work performance of the covered employees" (Pet. App. 9b, 11b) was more important than the seamen's contacts with either New York or Texas, so that the "employees involved here are not for the purpose of their collective bargaining agreement employees of Texas or any other State—they are mobile, maritime employees, whose principal place of employment, or jobsite, is on the high seas" (Pet App. 12b–13b.)

The Fifth Circuit sitting *en banc* vacated the panel's judgment and, over six dissents, affirmed the judgment of the district court (Pet. App. 1a–36a). It held that "the federal labor legislation, the predominance of Texas contacts over any other jurisdiction, and the significant interest which Texas has in applying its right to work law to this employment relationship warrant application of the Texas law and, consequently, invalidation of the agency shop provision" (Pet. App. 7a–8a). It rejected the panel's job

situs approach because (Pet. App. 12a–13a) "if the congressional discussion on compulsory unionism could be said to have any single reference point, it is not job situs but the hiring process. And in our judgment, the language of section 14(b) which looks to the 'execution or application' of agreements requiring membership as a condition of employment refutes the notion that Congress was suddenly singularly concerned with the job situs of the employee rather than with the effect of such an agreement on men and women seeking employment in a mobile society."

The six dissenters adhered to the panel's view that maritime employment, "traditionally one in admiralty, regulated in virtually all aspects by federal maritime law, involving seamen who are wards of admiralty," should not be governed by state labor laws "when none of the employees work in the state" (Pet. App. 31a). Chief Judge Brown, in a dissent joined only by Judge Dyer, also argued (Pet. App. 34a) that "it would be better administration and more consistent with sound legal principles for the Court to refer this case to the NLRB under the doctrine of primary jurisdiction."

DISCUSSION

1. The first proviso to Section 8(a)(3) of the National Labor Relations Act, as amended (61 Stat. 140, 65 Stat. 601, 73 Stat. 525, 29 U.S.C.(a)(3)) (NLRB), makes lawful under that Act union security agreements that require union membership commencing 30 days after inception of employment. However, Section 14(b) of the Act, with obvious reference to

Section 8(a)(3), declares that "Nothing in this Act" authorizes 'the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." Section 14(b) thus permits a State, if it desires, to enact a more comprehensive ban on union security arrangements than does the proviso to section 8(a)(3), which bars only the closed shop. This Court has held that agency shop provisions, which are privileged under Section 8(a)(3) (*National Labor Relations Board* v. *General Motors Corp.*, 373 U.S. 734), are "within the scope of § 14(b) * * * and therefore * * * subject to prohibition by * * * [state] law" (*Retail Clerks* v. *Schermerhorn*, 373 U.S. 746, 747). According to an opinion of its Attorney General (Br. in Opp. A1–A8), the right to work laws of Texas prohibit the agency shop.

The court of appeals has held that the right to work laws of Texas apply to a collective bargaining agreement negotiated in New York and governing the relationship between a New York corporation and a group of workers who perform almost all of their work outside the boundaries of any State. It reached this conclusion because it thought that the majority of the workers had more extensive "contacts" with Texas than with New York or any other State. If the case were, in fact, controlled by a weighing of "contacts," there would be no occasion for review by this Court. The National Labor Relations Board submits, however, that neither Texas law, nor New York law, nor the law of any other State applies to the collective bargaining agreements of those whose jobs are performed beyond State borders.

Whether the union security laws of *any* State apply to such workers is, we submit, an important question warranting resolution by this Court. We have been informed by the Bureau of Labor Statistics that there are approximately 50,000 blue water seamen who may be affected by this decision; all of them, whether engaged in long-term or single voyage employment, have a job situs outside of any State.*

We acknowledge that this case appears to be one of first impression in federal courts. The Board's decisions touching on the question presented here have not been subjected to judicial scrutiny, and there is no conflict among the circuits. Nevertheless, because approximately half of the States with right to work laws are within the Fifth Circuit, the prospects for a conflict to develop are diminished and the importance of the instant decision enhanced. What is more, the decision below is at odds with a policy the Board (and many unions and employers) had regarded as settled. If allowed to stand, it would inject substantial confusion into the dealings between unions and employers, for neither would be able to predict with any accuracy which state law, if any, would be applicable and whether employers would be obliged to honor union security clauses to which they had agreed.

* 21,000 of these seamen are officers and pilots; some of these are supervisors with whom collective bargaining is not required by federal statute.

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2. The court of appeals thought that the laws of *some* State must apply, and held that Texas was that State. We submit that Section 14(b) does not permit application of state union security laws to those who perform their work outside its borders.

The Board was first faced with the problem of the extra-territorial application of right to work laws shortly after the Taft-Hartley amendments to the NLRA, when it was required, by Section 9(e)(1) of the Act,[7] to conduct union shop authorization elections. *Northland Greyhound Lines,* 80 NLRB 288, considered the applicability of state union security laws to interstate bus drivers, and concluded (*id.* at 291):

> In resolving the question as to the applicable State law, such factors as the residences of the employees, the places where they were hired, their headquarters, the proportions of working time spent in the various States, and (with regard to the drivers), their routes, have been given consideration. In view of all the circumstances involved, we are persuaded that the

[7] This provision (29 U.S.C. (1946 ed., Supp. I) 159(e)(1)), which was repealed in 1951 (Pub. L. 82–189, 65 Stat. 601), provided: "Upon the filing with the Board by a labor organization, which is the representative of employees as provided in Section 9(a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer."

> headquarters of the employees provide the best criteria because they represent the focal points of the employment relationship. [Footnote omitted.] The headquarters are where the employees report to work, receive their instructions, and are paid their salaries. It is, therefore, in the States in which they have their headquarters that the provisions of any agreement between a union and an employer regarding the employees involved will be effectuated. In view of the fact that most of the essential matters with respect to the employment relationship will be dealt with in the States where the employees have their headquarters, we believe that application of this test to determine which State law shall control will result in the least amount of extra-territorial effect being given to the laws of one State as against those of another.

Accordingly, the Board directed that "all employees whose headquarters are located in States having legislation prohibiting union-shop agreements should be excluded from the unit hereinafter found appropriate" (*ibid.*).

In *Western Electric Co.,* 84 NLRB 1019, 1022, decided the next year, the Board held that the "job site, as that is where [the employees] report for work, receive their instructions, and are paid their wages", was the "headquarters" for the Company's field equipment workers. The Board rejected a contention that those employees, who worked in 45 states and were subject to frequent transfers, all should be subject to the laws of the State where their employer has its main

office (*id.* at 1023, n. 15). See also *Giant Food Shopping Center*, 77 NLRB 791.

In sum, the Board has concluded that a State does not have sufficient interest in a particular group of employees to warrant application of the State's union security laws to them unless the individual employees work, or have their "headquarters," within that State. This test is consonant with the purpose of Section 14(b), which was designed to respect a State's judgment about the extent to which *its workers* should be required to join or support a union as a condition of employment. See H.R. Rep. No. 245, 80th Cong., 1st Sess. 34, 44 (1947), 1 Legislative History of the Labor Management Relations Act, 1947 (G.P.O., 1948) ("Leg. Hist.") 292, 325, 335; H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60 (1947), 1 Leg. Hist. 505, 564; Note, 88 Harv. L. Rev. 1620, 1627 (1975). The court of appeals, on the other hand, has afforded extra-territorial effect to Texas' judgment, necessarily denigrating the contrary judgment of New York and other States that have close contacts with individual seamen but which, like Texas, claim no seamen as members of the State's workforce.[8] As Judge Ainsworth pointed out in dissent (Pet. App. 30a, n. 21),

[8] Approximately 40 percent of the seamen sought employment at respondent's New York office. Even though the "final hiring decision" occurred in Texas, this was only a formality for seamen applying in New York; the Texas office set manpower requirements and kept personnel records, but Mobil's New York representatives chose the particular seamen (App. 88–91). Moreover, the seamen hired in New York can, and frequently do, ship out of other than Texas ports, and more than half of all the seamen list a State other than Texas as their residence.

"the majority opinion does not fully explain how Congress could fairly be said to have intended that a New York employee of Mobil, who resides in a state where his employment contract was entered into and where agency shop provisions are permissible, and who performs no work whatever in Texas, should be prohibited by Texas law from enjoying the benefits of an agency shop provision in his employment contract."

Under the Board's employee headquarters or jobsite criteria, the decision of the court of appeals is incorrect. The employees report to work on the ship in a variety of ports not limited to Texas; they receive their work instructions on the ship, and are paid their wages there. All work is performed aboard the ship, which most of the time is on the high seas. When the ship is in a Texas port, it is there for only a few hours; the seamen do not leave the ship unless the docking happens to coincide with their off-duty period.

The court of appeals sought to distinguish *Northland Greyhound* and *Western Electric* on the ground that the "issue raised in those cases * * * was not whether some state law applied to the employment relationship but *which* state law applied" (Pet. App. 5a, n. 5). But this distinction assumes that "some state *had* to meet the criteria of 14(b)" (Pet. App. 34a, n. 6, emphasis added). There is no reason why this must be so. If no State is the job situs of the workforce, then no State has sufficient interest in applying its policies, whatever they may be, with respect to union security clauses. Chief Judge Brown correctly observed in dissent (Pet. App. 33a–34a):

Section 8(a)(3) expressly sanctions as a matter of federal policy union shop agreements with the important limitation that such agreements will not be valid "as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." While noting this "tension" between federal and state policy, the Court starts and finishes with the tacit assumption that the Court must find *some* applicable state law—almost in a conflicts-of-law analysis. The basis for that assumption is in no way discernible from the Act itself or its legislative history. Instead, the emphasis of the Act is that union security agreements are of such importance that absent state proscription outlawing union shop employment relationships within that state, they will be favored. The job situs rule, though never before applied in precisely this situation, is merely a logical distillation of § 14(b). [Footnote omitted.]

Because the location of the employees' jobsite is controlling for purposes of Section 14(b), and because the seamen here work on the high seas,[9] the Texas

[9] Petitioner finds support for its argument, as did the dissenting judges (Pet. App. 25a–27a), in the fact that seamen usually are governed by uniform and federal maritime law rather than by state laws. There is, however, no abstract bar to appropriate state regulation of the maritime industry. This Court has precluded state interference with maritime commerce only when pervasive federal regulation or the nature of the endeavor neces arily requires rules of uniform applicability. See *Askew* v. *American Waterways Operators, Inc.*, 411 U.S. 325, 337–344; *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 738–739; *Huron Portland Cement Co.* v. *City of Detroit*, 362 U.S. 440, 444. Cf. *American Radio Association* v. *Mobile S.S. Association, Inc.*, 419 U.S. 215; *Windward Shipping* v. *American Radio Associa-*

right to work laws cannot properly be applied to them.[10]

3. The court of appeals correctly held, however, that it had jurisdiction of this case. The issues subsumed in the second question presented by the petition have been the subject of consideration by this Court on numerous occasions, and there is no need for it to consider them again here.

This Court held in *Smith* v. *Evening News Association,* 371 U.S. 195, 197–198, that federal courts have jurisdiction to determine the validity of a provision in a collective bargaining agreement even though the dispute may also involve an unfair labor practice within the Board's jurisdiction. Cf. *Connell Construction Co.* v. *Plumbers Local No. 100,* No. 73–1256, decided June 2, 1975, slip op. 9; *Retail Clerks* v. *Schermerhorn,* 375 U.S. 96, 102–105. The court of appeals

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tion, 415 U.S. 104. Section 14(b) expressly permits diversity of regulation concerning union security and contains no exemption for maritime workers (compare the Railway Labor Act, which contains such an exemption (45 U.S.C. 152 Eleventh), nor would maritime commerce be disrupted or hindered by the application to different ships or employers of different union security rules. We therefore conclude that the potential for nonuniformity of law governing maritime affairs is not an objection to the court of appeals' decision.

[10] One commentator has suggested that, since the hiring process takes place in both Texas and New York, and both States have a large number of affected employees as residents, the problem should be resolved by applying both Texas' and New York's union security laws to the Company's work force. Under this proposal, members of the same crew, subject to the same contract, would be governed by opposing union security rules. Note, 88 Harv. L. Rev. 1620, 1629–1630 (1975). This proposal, with its potential for disruption of labor-management relations, has no support in the statute or its legislative history.

therefore correctly held that the jurisdiction of the district court to determine the validity of the agency shop clause here was not preempted by whatever parallel authority may be lodged in the Board.

Chief Judge Brown suggested (Pet. App. 34a–36a) that the district court should have deferred to the primary jurisdiction of the Board. But such deferral would presuppose the availability of a Board procedure for resolution of the issue in question. *Local No. 189, Meatcutters* v. *Jewel Tea Co.*, 381 U.S. 676, 687–688. The Board has no generally available procedure for resolving questions of this sort. Although the parties could have sought an advisory opinion, such proceedings generally have been entertained by the Board only for determining whether the amount of commerce involved in a case would satisfy the Board's discretionary jurisdictional yardsticks. See, *e.g.*, *National Bulk Carriers, Inc.*, 134 NLRB 1186; *Jemcon Broadcasting Co.*, 135 NLRB 362, 367; *Connecticut State Board of Labor Relations and Hartford Building Maintenance Co.*, 145 NLRB 1415.

As the Court observed in *Jewel Tea, supra*, 381 U.S. at 687, a private litigant cannot ensure Board determination of an issue, for "[i]t is the function of the Board's General Counsel rather than the Board or a private litigant to determine whether an unfair labor practice complaint will ultimately issue." What is more, even should the General Counsel bring a case of this sort before the Board, it is far from clear that the Board could resolve the dispute, because maintenance of a union security clause alleged to violate state

law generally is not an unfair labor practice under the NLRA if the clause satisfies the requirements of Section 8(a)(3). See *Retail Clerks* v. *Schermerhorn*, supra, 375 U.S. at 102–103; *Local 34, Int'l Molders (Daniel Garczynski)*, 150 NLRB 913, 916–919; Quarterly Report of the General Counsel for the First Quarter of 1975, 89 LRRM 199–200; *United Steelworkers (Capitol Foundry Div.)*, 199 NLRB 153. The Board therefore does not possess primary jurisdiction in cases of this sort.

CONCLUSION

The petition for a writ of certiorari should be granted, limited to the first question presented.

Respectfully submitted.

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SEPTEMBER 1975.

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October Term, 1975

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO AND MARITIME LOCAL UNION No. 8-801,

Petitioners,

v.

MOBIL OIL CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

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Supreme Court of the United States

October Term, 1975

No. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO AND
MARITIME LOCAL UNION NO. 8-801,

Petitioners,

v.

MOBIL OIL CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals *en banc* entered November 8, 1974 (Appendix A to Petition, hereafter, "Pet. App.", pp. 1a-36a) is reported at 504 F.2d 272. The opinion of the original panel entered August 10, 1973 (Pet. App., pp. 1b-16b) is reported at 483 F.2d 603. The District Court's Findings of Fact and Conclusions of Law (Pet. App. 1d-8d) are reported at 81 LRRM 2051.

JURISDICTION

The original decision of a panel of the Fifth Circuit was entered on August 10, 1973. Purusant to timely motion of Respondent Mobil, rehearing *en banc* was granted and de-

cision of the *en banc* court was entered November 8, 1974. The Petition for Certiorari was granted on October 6, 1975. (A. 330.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

1. Whether under Section 14(b) of the Taft-Hartley Act and the Texas "right to work" laws a union security provision in the form of an agency shop clause may apply to seamen who work exclusively aboard oceangoing vessels which move between Texas and non-Texas ports?[1]

STATEMENT OF THE CASE

I. *The Underlying Facts*

At the time of this suit petitioner Union and respondent Employer were parties to a collective bargaining agreement, covering a unit of unlicensed seamen on Mobil's oceangoing tankers, which provided in part:

"2. UNION SECURITY

b. For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within thirty-

[1] A second question was presented in the Petition: "Whether the courts below should have withheld declaratory judgment in favor of referral to the National Labor Relations Board for the initial decision in accommodating Sections 14(b), 8(a)(3) and the Texas 'right to work' laws?" Because the Board itself has since argued that this question should be answered in the negative, and in light of the intervening discussion of the subject in *Connell Construction* v. *Plumbers Local 100*, 421 U.S. 616, we shall not argue this point.

one days from the employment date." (Pet. App. 4b.)

This is an action by Mobil for a judgment declaring that the foregoing is illegal by virtue of Texas' right to work law, which forbids such agreements. The question is whether, as the Employer contends, the Texas law governs the employment of these deep-water seamen, or whether the legality of the agency shop clause is to be determined, for some or all of the seamen, by the law of some other jurisdiction which has not forbidden the agency shop. The basic facts from which the parties have advanced their respective positions are those which show the various jurisdictions which bear upon this employment relationship.

A. *The Job Situs of the Seamen*

The company operates eight oceangoing tankers which move principally between the port of Beaumont, Texas and the port of New York City and other East Coast ports. To fix the situs of work, the pattern of ship movements was established from Mobil's logs and, also, by the testimony of John Knepper, Manager of Gulf-East Coast Operations.

For vessels on the Beaumont-East Coast regular run, the following actual times were extracted from logs and established as "typical" (A. 179-180):

Ship	*Time Period in 1972*	*Time in Port of Beaumont*
SS Mobil Arrow	May 9-June 11 (34 days)	42 hours
SS Eclipse	April 27-June 22 (56 days)	99 hours
SS Mobil Fuel	May 8 to June 7 (31 days)	14 hours

SS Mobil Gas	June 1-June 23 (23 days)	43 hours

The seaboard-to-seaboard voyage requires 4½ to 5 days, Loading and unloading in port requires 18 to 30 hours. Two trips per month per vessel is usual. At Beaumont, a vessel is with pilot about 6 hours each way. At Providence, 3½ hours with pilot is usual. (A. 118, 119, 120)

Once a month, a vessel goes to Brownsville, Texas, requiring 18 days for the round trip. Eight times yearly, a vessel travels from Boston to Puerto Rico and return. At time of trial, the *SS Mobile Lube* had not been in a Texas port for 50 days, was en route to Hawaii, and was under government charter for six months. In 1971, 15% of voyage time of these vessels was devoted to foreign voyages, according to Knepper. (A. 122, 123, 124)[2]

On the basis of this evidence the District Court found, and the majority of the Court of Appeals acknowledged, that substantially all work occurred aboard tankers, which 80% to 90% of the time were traveling on the high seas or were located in ports outside Texas. (Pet. App. 5a.)[3]

B. *The Seamen's Residence and Designated Port*

Of the 289 employees, 123, or 43%, have reported Texas as their state of residence. The other 57% have listed their

[2] In 1970-1971, Mobil sold two vessels which it had operated theretofore in foreign commerce, the *SS Kolina* and *SS Sciotic*. These voyaged primarily to European ports (A. 177-178). These vessels had likewise been covered by this labor contract.

[3] The actual arithmetic shows the vessels are present in the Port of Beaumont only 5.5% of the time. Even this figure diminishes when foreign voyages, etc., are averaged in. (Pet. App. 11b.)

residence as follows: 60—New York, 21—New Jersey, 16—Florida, 13—Louisiana, 10—Rhode Island, 36—sixteen other states (A. 63, 237). Also, Mobil maintains a shipping port designation system. Advance designation of one of three named ports by an employee determines his future travel allowances to and from his residence. These designations show: 152—Beaumont, Texas; 197—New York, N.Y.; and 30—Providence, R.I. (A. 63, 237).

C. *The Company's Administrative Structure and Its Consequences*

Mobil is a New York corporation, with top corporate offices in New York. Mobil's Marine Transportation Department is operated by its General Manager, and below him, by its Manager of U.S. Operations, all located in New York. Below this level is the Manager of Gulf-East Coast Operations (Mr. Knepper), whose office is in Beaumont, Texas and who heads up the Gulf-East Coast Operations which is now also located there. Until 1962 Gulf-East Coast Operations was also headquartered in New York but in that year it was transferred to Beaumont. Due to the transfer of this intermediate level of management and operations, it is in Texas that Mr. Knepper supervises the ships' masters, conducts personnel administration, ultimately approves hiring and firing, assigns men to ships, and administers the labor contract and the payroll. Unemployment taxes are paid to Texas alone. (R. 125; A. 55, 58, 60, 71, 73, 93).

The office which handles seamen's claims for maintenance and cure, health, accident, and like benefits is in New York

(A. 78). All the vessels are registered in ports outside Texas (A. 146).

D. *The Collective Bargaining Agreement and Its Administration*

The Union was certified as bargaining representative by the New York office of the N.L.R.B. (Def. Ex. 1). It has offices in New York and Beaumont. Checkoffs of dues are mailed by the Company to the Union's New York Office (Pet. App. 2d).

At all times since 1942, labor contracts for this bargaining unit have been negotiated in New York (A. 130). The contract challenged by the Employer required 35 to 49 negotiating sessions in 1969; all took place in New York (A. 103, 130). A written draft was signed in New York on October 30, 1969, effective upon ratification by the men, which was provided in time for the contract to be made effective on November 1, 1969. (A. 104, 105, 132, 133, 147; 271). On November 18, 1969, a "smooth final form" was re-executed in Beaumont (A. 106-107). The Beaumont event was a matter of proof reading against the draft which had been executed in New York (A. 134).

Because the work which is the subject of the collective bargaining agreement is performed on the ship, the terms of the agreement which deal with the employee's working conditions, and the Company's power to direct them, operate on shipboard. The seamen are paid in cash by the ships' masters (A. 124), payment being made in northern ports (A. 125).

Sixty percent of the job applications are made in Beaumont, Texas, and forty percent in New York; the final paper work takes place in Beaumont, Texas. Discharges may occur at the hands of the ship's masters at any place (A. 76, 184) but are subject to approval by Mr. Knepper in Beaumont (A. 76).

The collective bargaining agreement provides that any grievance is to be filed aboard ship, and the first three steps of the grievance procedure also take place on the ship. In the event of disagreement, the next step is at the Company's Beaumont office. (A. 95-96.) The contract provides for arbitration of unresolved grievances; all arbitrations have been held in New York. (A. 96, 136-137.)

II. *Proceedings Below*

A. *The District Court*

Mobil brought this suit under Section 301 of the Act for a declaratory judgment that the agency shop provision of the agreement was unlawful. The trial court made findings of fact, including that "A more substantial part of the administration of the collective bargaining agreement and the performance thereof occurs and takes place in the State of Texas *than in any other State.*" (Pet. App. 4d; emphasis added.) The court concluded that the Texas right to work law was applicable, that the agency shop is unlawful under Texas law, and that that clause is therefore unlawful.

B. *Court of Appeals*

On the Unions' appeal, a panel of the Court of Appeals reversed the judgment of the District Court by a 2-1 vote. Judge Ainsworth, waiting for the majority, reasoned:

"Conceding, arguendo, that the district court cor-

rectly found that a more substantial part of the administration and performance of the collective bargaining agreement occurs in the State of Texas than in any other state, such a finding is not decisive of the issues in this case. In making such a finding the district judge took into consideration various facts associated with Texas, and acts occurring therein, thereby weighing the interests of Texas against other states. In so doing the court failed to give proper consideration to the most important factor in the case, that is, the situs of the work performance of the covered employees. The trial judge, in written factual findings, held in this regard that

> 'Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters.'

"Use of Employers' headquarters as the decisive criterion in this case would allow an employer to make an arbitrary choice, and could produce bizarre consequences. Headquarters could be shifted about by large national companies to states with favorable labor laws, such as the right-to-work statutes.

• • •

"Under the facts of this case the job situs of the employees is the most important and logical factor. As the Union has pointed out to us, Mobil's top headquarters is in New York, and prior to 1962 its Marine Transportation Department was likewise headquartered in New York. Thus, as the Union states, the change in headquarters from New York to Beaumont

did not substantially change the working location of the men which remained the same.

• • •

"State right-to-work laws are applicable only to employees of that particular state. The employees involved here are not for the purpose of their collective bargaining agreement employees of Texas or any other state—they are mobile, maritime employees, whose principal place of employment, or jobsite, is on the high seas." (Pet. App. 11b-13b.)

Judge Thornberry dissented. (Pet. App. 14b-16b.)

Mobil then successfully petitioned for rehearing *en banc*. The full Court, by an 8-6 vote, set aside the panel decision and affirmed that of the District Court. Judge Thornberry, now writing for the majority, emphasized that Texas had more significant contacts than any other State; he regarded of particular importance Texas' connection with the hiring process and the fact that it was the residence of more of the seamen than any other. He rejected the view, taken by the dissenting judges and by the N.L.R.B., that the job situs should be the controlling factor and determined that the high seas were not a jurisdiction with a policy on union security agreements. Concluding that there was no objection to extraterritorial application of the Texas right-to-work law, he held the agency shop to be unlawful. And, he refused, despite the residency of the majority of the employees outside Texas, to make the Texas right-to-work law inapplicable to them. On this issue, he held that the agreement could not be revised to have different classes of employees, and also that the record was insufficient to demonstrate "that there is an identifiable group of employees who are not subject to the Texas law." (Pet. App. 1a-22a.)

Judge Ainsworth wrote a dissenting opinion on the merits, in which he was joined by Judges Brown, Dyer, Simpson, Morgan and Roney. (Pet. App. 22a-31a.) Judge Brown, joined by Judge Dyer, also wrote a dissenting opinion urging that the Court should have deferred to the N.L.R.B. regarding the proper interpretation of the Act in this context. (Pet. App. 31a-36a.)

SUMMARY OF ARGUMENT

1. An understanding of the limited function of § 14(b) of the National Labor Relations Act ("NLRA"), added in 1947 as part of a careful Congressional reassessment of the entire problem of discrimination in employment based upon membership or non-membership in a labor organization, is critical to the decision of this case. It was determined in 1947 that a national policy prohibiting preexisting union membership as a condition of initial hiring and providing that no employee can be required to join a union during the first thirty days on a job was necessary to eliminate barriers to free employment. This policy was embodied in the provisos to § 8(a)(3) of the NLRA as amended. Section 14(b) was added only to make certain that states would retain their *previous* authority to ban union security agreements relating to continuation of employment *after* the initial hiring and 30-day period for which § 8(a)(3) prescribed a uniform, national policy. (*Retail Clerks* v. *Schermerhorn*, 373 U.S. 746, 751.)

2. The basic issue in this case is identifying the method to be used and the factors to be considered in determining which jurisdiction's policy regarding the validity of union security clauses relating to continuation of employment is

to be given effect, when the relationship between the employer and the employees touches two or more jurisdictions. The Court of Appeals sanctioned weighing *all* the contacts with the various jurisdictions concerned, giving dominant consideration to the location of the final hearing decision and thereby approving an extraterritorial effect of a state's law upon some employees who are not present within its borders. The Court of Appeals approach is based upon a complete misunderstanding of the purposes of § 14(b) and of its place in the overall scheme of the Act.

First, § 14(b) was intended to make clear that each state may determine its own policy regarding the union security clauses within its scope. To sanction an extraterritorial effect of one jurisdiction's policy upon that of another is to undermine that principle.

Second, certain factors given great weight by the Court of Appeals are, by reason of the limited scope of § 14(b), entirely irrelevant in determining its application. Since § 14(b), like the NLRA generally, is concerned only with the employment relationship, factors unrelated to that relationship, such as the residence or domicile of either the employer or employee, should not be considered at all. And since Congress' concern with hiring policy as it relates to union security agreements was taken care of by enacting a uniform national policy on this matter, the place of hiring, as the dissenters below carefully explained, should be of no import in determining the geographical reach of state laws which cannot alter this nationally-applicable policy.

Third, the Court of Appeals approach introduces a regime of uncertainty about which jurisdiction's policy gov-

erns under § 14(b) and permits either or both parties to affect the applicable law by manipulating factors with no real impact upon the employees' work.

Once the function of § 14(b) is understood, certain principles emerge for determining which jurisdiction's § 14(b) policy governs a particular employee-employer relationship. These are that the test used should limit extraterritorial application of a state's policy, be based on the employment relationship, center on the continuity of the employment relationship once established, and focus on one or a limited number of factors.

The contact with a jurisdiction which, under these principles, ordinarily should govern is the one the Court of Appeals rejected as having any relevance—the job site. Moreover, the language of § 14(b) indicates that the location where the work is done controls. And the NLRB's practice, entitled to particular respect under the doctrine of *Norwegian Nitrogen Products Co.* v. *United States,* 288 U.S. 294, is in accord both with the general principles enunciated above and with the choice of job site as the factor ordinarily to be controlling under these principles.

3. The job sites here were American flag vessels on the high seas. While the Court of Appeals appeared to presume that only the interests of *states* are relevant under § 14(b), in fact there are jurisdictions, such as the District of Columbia, exclusively under Congressional control, whose policies regarding union and agency shops are also protected by § 14(b). Since Congress has not passed right-to-work laws with regard to such jurisdictions, union and agency shop agreements are valid with regard to employees

working therein. And the sovereign law-making authority with regard to the internal economy of American flag vessels on the high seas is, by virtue of art. III, § 2 of the Constitution, the United States Congress. (*United States* v. *Flores,* 289 U.S. 137.) Indeed, Congress has imposed extensive regulation upon the employment of seamen on the high seas; as the dissenters below noted, "state regulation of this employer-employee relationship stops at the water's edge." (Pet. App. 26a-27a.) Thus, while there are borderline situations in which state law can constitutionally affect matters arguably within the maritime power, federal authority over an agreement for employment on the high seas is exclusive. (*Union Fish Co.* v. *Erickson,* 248 U.S. 308; *Kossick* v. *United Fruit Co.,* 365 U.S. 731, 741.)

4. Since these employees work on American flag vessels on the high seas, and since the law-making authority governing the employment of seamen on the high seas, the United States, has not forbid union and agency shop agreements, the agreement here is valid. Moreover, even if the contact weighing approach of the Court of Appeals were used, the contacts with Texas do not predominate once the fact that the employees perform nearly all their work on the high seas, a separate jurisdiction for purposes of this case, is taken into account. Finally, the Court of Appeals was in error, even upon its own view of the case, in not validating the agency shop agreement as to those employees who applied for jobs and/or reside in New York.

ARGUMENT

I. Introduction—The Function of § 14(b) in the NLRA

Section 14(b) of the National Labor Relations Act

provides:

> "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

That Section was added to the Act in 1947 as part of a thorough review of federal policy toward discrimination in employment based upon membership or non-membership in a labor organization. To understand its limited thrust, it will be helpful to review the background of its enactment.

The state of the law before 1947 was explained by this Court in *Labor Board* v. *General Motors*, 373 U.S. 734, 738-740:

> "Section 8(3) under the Wagner Act was the predecessor to § 8(a)(3) of the present law. Like § 8(a)(3), § 8(3) forbade employers to discriminate against employees to compel them to join a union. Because it was feared that § 8(3) and § 7, if nothing were added to qualify them, might be held to outlaw union-security arrangements such as the closed shop, see 79 Cong. Rec. 7570 (statement of Senator Wagner), 7674 (statement of Senator Walsh); H.R. Rep. No. 972, 74th Cong., 1st Sess. 17; H.R. Rep. No. 1147, 74th Cong., 1st Sess. 19, the proviso to § 8(3) was added expressly declaring:
>
> '*Provided*, That nothing in this act . . . or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein, if such labor organization is the

> representative of the employees as provided in section 9(a)....'
>
> "The prevailing administrative and judicial view under the Wagner Act was or came to be that the proviso to § 8(3) covered both the closed and union shop as well as less onerous union-security arrangements, if they were otherwise legal."

In 1947, Congress reconsidered the rule embodied in the proviso to § 8(3). Indeed, that reconsideration was one of the major issues debated during the process of revising the Wagner Act. The Report of the Senate Committee on Labor and Public Welfare noted: "A controversial issue to which the committee has devoted the most mature deliberation has been the problem posed by compulsory union membership." (S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 5.) The Committee Report observed that "abuses of compulsory membership have become so numerous there has been great public feeling against such arrangements" but also that "leaders of organized labor have stressed the fact that in the absence of such provisions many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost." (*Id.* at 6.) And the Report explained that "The committee has taken into consideration these arguments in reaching what it considers a solution of the problem which does justice to both points of view." (*Id.*)

The solution reached by the Senate and ultimately adopted was a detailed compromise fully explained in the Senate Report. Primarily, it was concluded that "it is clear that the closed shop which requires preexisting union membership as a condition of obtaining employment creates too

great a barrier to free employment to be longer tolerated." (*Id.*) On the other hand, it was determined that:

> "[E]mployers would still be permitted to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired if a majority of such employees have shown their intent by secret ballot to confer authority to negotiate such an agreement upon their representatives. But in order to safeguard the rights of employees after such a contract has been entered into, two additional safeguards are provided: (1) Membership in the union must be available to an employee on the same terms and conditions generally applicable to other members; (2) expulsion from a union cannot be a ground of compulsory discharge if the worker is not delinquent in paying his initiation fee or dues; * * *" (*Id.* at 7.)[4]

It was therefore believed that:

> "these amendments remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements." (*Id.*)

Thus, the decision made was to enlarge the prohibition against employer "discrimination in regard to hire and tenure of employment" by altering the proviso to former § 8(3) so as to state a uniform Federal rule governing "hire" and the first 30 days "tenure of employment." That rule is that employers may neither prefer nor disfavor union members in the hiring process and that no employee

[4] The Senate Committee proposed a third protection (for persons "denied membership (for) work[ing] for the change of a bargaining representative") which was not enacted.

can be required to join a union during those 30 days.

After 30 days, however, union membership could be required by agreement (subject to the restrictions described in the Senate Report). But with respect to *this* privilege the general policy of uniformity gave way: by virtue of § 14(b) the States retained their prior authority to enact legislation declaring any agreements limiting tenure of employment to union members invalid.

As this Court recognized in *Retail Clerks* v. *Schermerhorn*, 373 U.S. 746, 751 (footnote omitted, emphasis supplied):

> "As is immediately apparent from its language, § 14 (b) was designed to prevent other sections of the Act from completely extinguishing state power over *certain* union-security arrangements. And it was the proviso to § 8(a)(3), expressly permitting agreements conditioning employment upon membership in a labor union, which Congress feared might have this result. It was desired to 'make certain' that § 8(a)(3) could not 'be said to authorize arrangements of this sort in States where such arrangements were contrary to the State policy.' H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60, 1 Leg. Hist. L.M.R.A. 564."

II. The Jurisdiction in Which Employees Work Controls the Legality of Union Security Provisions Covering Those Employees

The basic issue before the Court in this case is the effect of § 14(b) in a situation in which the relationship between the employee and the employer touches two or more jurisdictions. The problem can arise in many forms, of which we offer several. A labor agreement may be executed in

one state between a corporation headquartered in that state and a labor organization representing employees all of whom work entirely in another jurisdiction, with contrasting union security policies in the two jurisdictions. A single agreement between a national company and a national labor organization may cover plants in both right-to-work and non-right-to-work jurisdictions. (An example of this was before this Court in *General Motors, supra.*)[5] Or an agreement could cover employees who perform their work primarily in a jurisdiction with one union security policy but perform some small portion of their duties in a jurisdiction with a contrasting policy. Finally, the employees themselves may be peripatetic, working each day in several jurisdictions with contrasting union security policies, with no one jurisdiction clearly predominant.

The Court of Appeals correctly described its "task" as being "to discover whether applications of the Texas right to work law would be in furtherance of the Taft-Hartley Act's expressed purposes." (Pet. App. 6a-7a.) However, it proceeded on a misunderstanding of those purposes, and particularly of the function of § 14(b). For, the Court concluded that Section 14(b) was primarily concerned with state regulation of the hiring process, and while it purported to "weigh all of the employer and employee contacts" (Pet. App. 17a), it singled out the place where the

[5] There the agreement provided for maintenance of membership and the union shops, but these provisions "were not operative • • • in such States as Indiana where state law prohibited making union membership a condition of employment." (373 U.S. at 735-736.) The problem in *General Motors* arose because Indiana qualified its prohibition against union security agreements by allowing the agency shop.

hiring decision was made as the contact entitled to dominant consideration. (Pet. App. 11a-13a.) Recognizing that as a consequence of this approach, and particularly of the special significance attached to the place where the company made its final hiring decision,[6] a state's right to work policy could have an extraterritorial impact upon employees who never stepped a foot in Texas, the court concluded that § 14(b) condones such control by one state over employees who work entirely outside that state. (Pet. App. 13a-14a, n. 12.)

The Court also considered other contacts which appear to have no possible relationship to the purposes of Section 14(b), such as the place where the employees "send their children to school," or where they take their vacations. (Pet. App. 15a.) Yet, it deprecated the one factor which in our view, and in the view of the dissenters, is the most significant of all—namely, the place where the employees perform their work. For the reasons stated below, we believe that this factor, rather than those relied on by the majority below, should be the controlling one.

A. As explained, *supra*, part I, § 14(b) incorporated no policy of its own regarding union security clauses within its scope, but merely made clear that each state was free to pursue its own policy to prohibit or allow such agreements. Inherent in the rule that each State may determine its own policy is the principle that it may not be deprived of that opportunity by another State. It would be to little

[6] In fact, many of the employees applied for jobs and were notified of their acceptance outside of Texas; they were "hired" in Texas only in the special sense that the employment papers were processed there.

avail, for example, to assure Texas of its freedom from federal intrusion upon its right to work policy, if Louisiana's policy favoring union security agreements were applicable to any agreement signed in Louisiana, even if the day-to-day contacts between the employees and the employers occurred entirely in Texas. Thus, in each case in which more than one jurisdiction has some involvement a choice must be made as to *which* jurisdiction's law governs. The ultimate issue is to define the method by which this choice of law problems is to be resolved. By accepting extraterritorial application of one jurisdiction's prohibition of the agency shop, the court below disrespected the Congressional policy of neutrality. The court of appeals erred further in its identification of the contacts which should govern the choice of law.

B. First, it must be remembered that the NLRA is a *labor relations* statute, which focuses on the employer-employee relationship. This factor immediately limits the contacts with a state which are relevant to application of any part of that statute. For example, the residence or domicile of either the employees or the employer, if the entire employment relationship existed elsewhere, would seem so unrelated to the basic thrust of the federal statute as to be irrelevant to this choice of law problem.

Thus, if employees live in Louisiana but work in Texas, the fact that Louisiana is not a right to work state should have no impact whatever upon the application of the Texas right to work law, since § 14(b), like the NLRA generally, is concerned only with individuals as workers, not with other aspects of their lives generally. Similarly, if a company incorporated in Louisiana operates a plant in Texas

and employs individuals who spend their entire working day in Texas, the fact that the state of incorporation permits union security clauses must be irrelevant, since no portion of the employment relationship occurs in that State. Residency, and related factors, would be relevant, indeed controlling, if this case involved a choice of which law governed the employees' right to vote in public elections, their duty to pay local taxes or the conditions for obtaining a divorce.

Moreover, a proper consideration of the particular concerns of § 14(b) eliminates as a relevant factor the place of hiring upon which the majority relied most heavily.[7]

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[7] "When the Congress prohibited the closed shop while permitting the union shop in the Taft-Hartley Act, the Congress was demonstrating its concern with the process by which men and women were hired. As conceived by that legislative body the closed shop enabled union hiring halls to control absolutely the pool of labor available to an employer. H.R. Rep. No. 245, 80th Cong., 1st Sess., 1 Leg. Hist. L.M.R.A. 295, 300. The hiring decisions was, in effect, made by the union hiring hall, for the employer never saw a job applicant unless the applicant had been referred by the union, and of course, only union members were referred. The Congress singled out the maritime industry as a serious problem area. The legislative history of the Act exhibits an express intent to give to the employer some measure of freedom in the hiring process. See H.R. Rep. No. 245, supra; see also, e.g., 93 Cong. Rec. A1297 (1947) (remarks of Representative Gerald Landis) and 93 Cong. Rec. A2011 (1947) (remarks of Representative Hugh Meade), *infra* at note 11. The union shop agreement permits an employer to hire a person who has not, at or before the moment of hiring, joined the union. With the proscription of the closed shop, union hiring halls are now required to refer job applicants on a nondiscriminatory basis, so that an employer may consider nonunion applicants on an equal basis with union applicants. NLRB v. Houston Chap., Asso. Gen. Con. of America, Inc. [349 F.2d. 449

For, the majority's reading of the legislative history, which was the basis for its view, is entirely unsound. As the dissenting opinion of Judge Ainsworth carefully demonstrates, the problem of the hiring hall, of discrimination in hiring generally and of compulsory union membership during the first 30 days of employment, were all regulated through the uniform federal rules stated in § 8(a)(3); § 14(b) does not touch these problems at all:

> "The majority opinion places much emphasis on the legislative history of the Taft-Hartley Act, concluding that it indicates great concern with the hiring process and a willingness to substitute state law for federal standards where appropriate. Congress was in truth concerned about the adverse impact of compulsory unionism on the hiring process, but section 14(b) was not, as the majority suggests, designed to be the remedy for these ills. Section 14(b) was inserted into the Taft-Hartley Act merely to restate preexisting law, not to expand the jurisdiction of states relative to employment conditions involving maritime workers, traditionally the subject of Federal law. The National Labor Relations Act (Wagner Act) itself was not intended to override state laws regulating the closed shop. Congressional amendment of what is now section 8(a)(3) of the Labor Management Relations Act, 29 U.S.C. § 158(a)(3), not the inclusion of section 14(b), was the

(5th Cir. 1965)]. In short, if the congressional discussion on compulsory unionism could be said to have any single reference point, it is not job situs but the hiring process. And in our judgment, the language of section (14b) which looks to the "execution or application" of agreements requiring membership as a condition of employment refutes the notion that Congress was suddenly singularly concerned with the job situs of the employee rather than with the effects of such an agreement on men and women seeking employment in a mobile society." (Pet. App. 11a-13a)

chief tool designed to alleviate the perceived evils of compulsory unionism.

> "A careful reading of the legislative history of the Taft-Hartley Act shows that Congress felt that section 8(a)(3) would curb problems in the hiring process by removing prior union membership as an employment prerequisite and by providing that expulsion from a union would not necessitate discharge from employment so long as initiation fees or dues were not delinquent. Senator Taft noted in debate that a prime example of problems generated by the closed shop was in the West Coast shipping industry. He then outlined the changes that would be made by section 8(a)(3) and, with no reference whatever to section 14(b), concluded that the abuses in the hiring process would thereby be corrected. Congress did indeed single out the maritime industry as a serious problem area, as noted by the majority opinion (ante, p. 11a & n. 10). The cited provisions of the legislative history, however, make no reference to section 14(b) as a palliative for these problems; rather, the amendments to section 8(a)(3) were deemed fully capable of solving these problems. Since the agency shop provision before us avoids the evils in the hiring process Congress was trying to correct, and since it is clearly valid under section 8(a)(3), it cannot be validly concluded that enforcement of this provision is contrary to federal labor policy." (Pet. App. 27a-30a).

A concomitant principle inherent in the background of § 14(b) is that the decision as to which law governs must be relatively foreordained and not subject to manipulation by either or both of the parties. The Court of Appeals seeks to assume that its analysis would not sanction a "truly arbitrary choice" of state law achieved by manipulating an employer's operations (Pet. App. 18a). But Judge Ains-

worth is surely correct when he points out that this case could not have been decided as it was if Mobil had not moved its intermediate level headquarters to Beaumont, although that change made no difference in the covered employees' working location or conditions. (Pet. App. 11b-12b). And while § 14(b) contemplates disuniformity in union security policy among jurisdictions, it certainly did not intend to institute a regime of uncertainty about which jursdiction's law governs in a given situation. Yet, the multiple contacts approach of the Court of Appeals invites just such uncertainty and conflict by its inherent imprecision. One of the motivating forces behind the 1947 amendments was the felt necessity to bring stability and certainty into collective bargaining relationships.

The foregoing establishes at least four propositions which must govern the decision as to which jurisdiction's policy on the union shop may be applied to determine the validity of any particular agreement. First, the test should not permit one jurisdiction to dictate policy on the union shop to another. Second, the test must be based upon the employment relationship between the employee and the employer, and not any factors which concern one or the other party but are irrelevant to that relationship. Third, the test must center upon the continuity of the employment relationship once established, for that is the field within which the states are free to vary the federal substantive law stated in § 8(a)(3). Finally, the test should focus upon one or, at best, a limited number of factors, so as to prevent uncertainty and manipulation.

C. Given the nature of the relationship regulated, the one factor which should determine which jurisdiction's union

security policy controls is the one which the majority below rejected—the job situs, where the day-to-day contact between the employer and the employees occurs. It is in that jurisdiction that the employment relationship is centered and that effect of a union security clause governing continued employment, or the lack thereof, will be felt. In only rare instances will that location be subject to legitimate controversy. Moreover, that factor cannot be manipulated upon the whim of the parties to render contracts valid or invalid.

The language of § 14(b) itself points in this direction. The section says that the Act does not authorize agreements "requiring membership in a labor organization as a condition of *employment in* any State or Territory" (emphasis supplied) in which such agreements are illegal.[8] The normal understanding is that an individual's place of em-

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[8] Since § 14(b) refers specifically to "execution or application" of the prohibited agreements, and permits states and territories to bar either execution or application, or both. The obvious purpose of expressly permitting jurisdictions to prohibit execution *and* application is to permit them to protect employees against the felt compulsion to join a union because of the very existence of the agreement, rather than only against discharge if they fail to join. Moreover, no conceivable Congressional purpose would be served by reading § 14(b) as authorizing a state to prohibit the execution within its boundaries of a union security agreement which is to be applied entirely in another state (or states) in which such agreements are permitted. For example, if a company headquartered in Texas owned a plant in Louisiana, and conducted its labor negotiations in Texas, that company should not be prohibited from entering into a union security agreement with respect to its Louisiana plant merely because the negotiation and execution of the agreement happened to occur in Texas.

ployment is where he works, not, for example, the employer's administrative headquarters.

The administrative practice of the NLRB is in accord. The Board developed its rules for applying section 14(b) in a multi-state situation in a series of cases concerning § 9(e) of the Act, since revised, which then required an election among employees to authorize the negotiation of a union security agreement.[9]

First, in a case in which some employees of a District of Columbia corporation did all their work in the District, a non-right to work jurisdiction, and others did all their work in Virginia, a right to work jurisdiction, the Board held that no union security agreement would be valid with regard to the employees in Virginia, but that those employees working in the District could enter into a union security agreement if the necessary proportion of them so voted. *Giant Food Shopping Center, Inc.*, 77 NLRB 791, 794-95 (1947). Thus, the Board adopted the basic proposition that, when employees spend their work days within a given jurisdiction, that jurisdiction's union security policy is to be given effect under § 14(b).

The second case, *Northland Greyhound Lines Inc.*, 80 NLRB 288 (1948), considered the much more complex situation of employees who by the nature of their employment travelled continually from right to work to union security

[9] The experience under § 9(e) as originally enacted was that employees authorized union shop agreements in 97% of elections. In 1951, Congress responded by eliminating the authorization requirements, substituting therefor a deauthorization election at the request of 30% of the employees in a bargaining unit. Act of October 22, 1951, C. 534, 51 (c, d), 65 Stat. 601.

jurisdictions. In approaching the question, the Board first adopted precisely the governing principles we have spelled out above: It concentrated upon a search for the "focal points of the *employment relationship*" (*id.* at 29; emphasis supplied), and consequently rejected the relevance of factors such as residence of employees and the place where the employees were hired. (*Id.*) Moreover, the Board recognized that under § 14(b) the "test to determine which State law shall control [should] result in the least amount of extraterritorial effect being given to the laws of one state as against those of another." (*Id.*)

The application of the principles enunciated, however, was more difficult than it had been in *Giant Food,* and than it is in this case, because the work day was spent not in any one jurisdiction exclusively or predominantly, but, instead, at least for many of the employees, was spent continually moving between jurisdictions with differing union security policies. Therefore, the Board could not apply a simple job situs test but, instead, had to find a substitute which it determined to be the *employees'* "headquarters," where they "report to work, receive instructions, and are paid their salaries." The Board adopted this location because for these peripatetic employees it was the focus of their employment relationship.

Finally, in *Western Electric Company, Inc.*, 84 NLRB 1019 (1949), a case in which the employees moved about relatively often, but apparently spent sustained periods of time within particular jurisdictions, each employee was held to be "subject to the law of the state in which his job site is located at the eligibility date [for the election]" (*id.* at 1023). The Board *rejected* the contention that the

law of the state in which was located the division of the company in charge of the employees and with whom grievances were processed governed. (*Id.* at n. 15.)

Since the Board's resolution of this conflict between jurisdictions was necessary to its administration of the Act, its practice in this regard is a classic instance of the kind entitled to respect under the doctrine of *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315: "[t]he practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new."

Thus, the language of § 14(b), the principles which logically flow from its function, and the practice of the agency charged with administration of the Act generally, developed when the statute was first in effect, all support the view, shared by the dissenting judges below, that the paramount consideration in determining the jurisdiction whose law is to govern under § 14(b) is the place where the employees spend all or almost all of their working time.

III. The Job Situs Here Is In the National Maritime Jurisdiction In Which Union Security Agreements are Permitted

The court below was confronted with the undisputed finding that 80% to 90% of the work was performed on American flag vessels on the high seas.

These facts were lost in the backwash of two critical rhetorical questions:

> "The high seas definitely have contact with the employees, but what is the interest of the high seas in preventing application of the Texas law? How is some important non-Texas, national, or international policy furthered by refusing to apply the Texas law?"

Of course, the high seas, as such, have no interest in the scope of the application of the Texas right to work law, but this is equally true of the deserts of Texas. In determining what law applies, it is the interests of sovereign law-making authority that are determinative. The majority below apparently believed that there are no sovereign authorities other than the States with respect to American flag vessels on the high seas, or that only the interest of the States, as such, are pertinent in identifying the jurisdiction whose § 14(b) choice controls.

That the NLRA covers jurisdictions as to which the law of no state controls is clear from the fact that the NLRA is applicable in the District of Columbia.

The problem presented here of determining whether a state right to work law is applicable where the employment relationship spans more than one jurisdiction can, and indeed regularly does, arise with respect to employees who work in Virginia (which prohibits the union shop) and in the District of Columbia (cf. *Giant Food, supra*). For the District is not a right to work jurisdiction because Congress, which in constitutional contemplation has the same legislative authority in the District as Texas has within its borders (see *Palmore* v. *United States*, 411 U.S. 389, 397) has chosen to permit the union shop. Thus, the national interest in the non-application of Virginia's right to work law in the District is the same as Maryland's interest in not having Virginia's right to work law applicable in Mary-

land. By recognizing the option of each State to determine its own policy within its borders, and by permitting the union shop within the non-state areas of its sovereignty, Congress necessarily contemplated parity among the States and among jurisdictions generally. It is this parity—this neutrality between right to work and union shop jurisdictions—that requires the construction of § 14(b) (developed above) that limits insofar as possible extraterritorial application of the differing policies permitted by the NLRA.[10]

The first proposition that appears to be implicit in the Court of Appeals' opinion, that the high seas are a jurisdiction in which there is no sovereign law-making power, is erroneous on more fundamental and, indeed, constitutional grounds. There is such a sovereign, and by virtue of art. III, § 2 of the Constitution, that sovereign is the United States. A particularly lucid statement of the constitutional history is that of Mr. Justice Stone for a unanimous Court in *United States* v. *Flores*, 289 U.S. 137:

> "Before the adoption of the Constitution, jurisdiction in admiralty and maritime cases was distributed between the Confederation and the individual states. Article 9 of the Articles of Confederation provided

[10] The lower court's opinion reveals its failure to appreciate the essential neutrality of § 14(b): "[A]llowing Texas to apply its laws here is in furtherance of the national labor policy." (Pet. App. 17a). This statement has no basis in any manifestation of the "national labor policy." For § 14(b) does not *prefer* right to work laws; on the contrary, the rule declared by Congress is that unless a jurisdiction acts expressly to prohibit the union shop, it is lawful within its territory. Moreover, and critically for purposes of this case, where Congress itself has plenary jurisdiction, as in the District of Columbia, it has chosen to permit such agreements.

that 'the United States, in Congress assembled, shall have the sole and exclusive right and power . . . of establishing rules for deciding in all cases, what captures on land or water shall be legal . . . appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures . . .' So much of the general admiralty and maritime jurisdiction as was not included in this grant of power remained with the states. The powers thus granted were in substance the same as those later conferred on the national government by Article 1, § 8 of the Federal Constitution. This section was adopted to carry out a resolution of the Convention 'that the national legislature ought to possess the legislative rights vested in Congress by the Confederation.' Its primary purpose and effect was to transfer to the newly organized government the powers in admiralty matters previously vested in the Confederation.

"A proposal independently made and considered in the Convention that 'the admiralty jurisdiction ought to be given wholly to the national government,' resulted in the adoption of Article 3, § 2, by which the judicial power of the United States was extended to all cases of admiralty and maritime jurisdiction.

"This section had been consistently interpreted as adopting for the United States the system of admiralty and maritime law, as it had been developed in the admiralty courts of England and the Colonies, and, by implication, conferring on Congress the power, subject to well recognized limitations not here material,[4] to

[4] In Panama R. Co. v. Johnson, 264 U.S. 375, 386, 387, the Court said: 'When all is considered, therefore, there is no room to doubt that the power of Congress

alter, qualify, or supplement it as experience or changing conditions may require. Panama R. Co. v. Johnson, 264 U.S. 375, 386, 388; Crowell v. Benson, 285 U.S. 22, 39, see The Oconee (D.C.) 280 Fed. 927; United States v. Bevans, 3 Wheat. 336, 389.

"In view of the history of the two clauses and the manner of their adoption, the grant of power to define and punish piracies and felonies on the high seas cannot be deemed to be a limitation on the powers either legislative or judicial, conferred on the national government by Article 3, § 2. The two clauses are the result of separate steps independently taken in the Convention, by which the jurisdiction in admiralty, previously divided between the Confederation and the States, was transferred to the national government. It would be a sur-

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extends to the entire subject and permits of the exercise of a wide discretion. But there are limitations which have come to be well recognized. One is that there are boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation, as by excluding a thing falling clearly within them or including a thing falling clearly without. Another is that the spirit and purpose of the constitutional provision require that the enactments,—when not relating to matters whose existence or influence is confined to a more restricted field, as in Cooley v. Port Wardens, 12 How. 299, 319,—shall be coextensive with and operate uniformly in the whole of the United States. Waring v. Clarke, 5 How. 441, 457; The Lottawanna, 21 Wall. 558, 574, 577; Butler v. Boston & S.S.S. Co. 130 U.S. 527, 556, 557; Re Garnett 141 U.S. 1, 12; Southern P. Co. v. Jensen, 244 U.S. 205, 215; Knickerbocker Ice Co. v. Steward, 253 U.S. 149, 164; Washington v. W. C. Dawson & Co. 264 U.S. 219, 2 Story, Const. 5th ed. §§ 1663, 1664, 1672."

> prising result, and one plainly not anticipated by the framers or justified by principles which ought to govern the interpretation of a constitution devoted to the redistribution of government powers, if part of them were lost in the process of transfer. To construe the one clause as limiting rather than supplementing the other would be to ignore their history, and without effecting any discernible purpose of their enactment, to deny to both the states and the national government powers which were common attributes of sovereignty before the adoption of the Constitution."

Not only does the foregoing conclusively establish the constitutional authority by virtue of art. III, § 2 of the United States over American flag vessels on the high seas, equivalent to its constitutional authority of the District of Columbia or Territories, but it refutes in terms the view of the Court of Appeals that Congress' only authority to legislate concerning conduct on the high seas is derived from art. I, § 8, cl. 3, which grants the power to regulate interstate and foreign commerce. That view is expressed in the sentence immediately following the questions quoted earlier and is apparently the basis of the Court's answer that there is no interest militating against the application of the Texas right to work law.

> "The fact that maritime work is interstate, or even international, in character does not imply that the Texas law is inapplicable since federal regulation in these matters is predicated upon interstate commerce." (Pet. App. 16a)

Pursuant to the admiralty and maritime jurisdiction Congress has developed a vast, all-pervasive and detailed body of statutory law regulating the employer-employee

relationship of blue water seamen. As the dissenters in the Court of Appeals noted:

> "Unlike the land-based worker, the seaman's employment and all of the rights and restrictions flowing therefrom are determined by federal statutory and admiralty law, not state law. Hiring, discharge and various terms of employment are regulated by shipping articles mandated by federal statute [46 U.S.C. §§ 563-568, § 713]. Compensation to seamen for illness, injury, disability and death is provided through the unique admiralty doctrine of maintenance and cure, and by special federal statutory enactments such as the Jones Act [46 U.S.C. § 688]. and the Death on the High Seas Act [46 U.S.C. §§ 761-768]. Federal maritime law covers the gamut of a seaman's employment relationship, including wages [46 U.S.C. §§ 682-685], maritime liens for the collection therefore [46 U.S.C. § 953], the protective procedures against attachment and assignment of wages [46 U.S.C. § 601], the rights accorded seamen to receive at every port half of unpaid wages earned [46 U.S.C. § 597] and double payment for wages withheld without sufficient cause [46 U.S.C. § 596], physical qualifications and requirements for seamen [46 U.S.C. § 672] and disciplinary problems [46 U.S.C. §§ 701-710]. In no employment field is the master-servant relationship so predominantly controlled by federal maritime law than in that existing aboard ship between the master of the vessel and the men who man it. *Indeed, it does not appear that there is any aspect of the employment relationship which Texas law may properly control—except, of course, for the novel injection of Texas' right to work law into the present labor contract. In practical effect, state regulation of this employer-employee relationship stops at the water's*

edge." (Pet. App. 26a-27a; emphasis supplied.)[11]

We are well aware that there has been considerable litigation regarding "the perverse and casuistic borderline situations" (*Executive Jet Aviation* v. *City of Cleveland*, 409 U.S. 247, 255) in which the admiralty jurisdiction may arguably be invoked. Thus, there is a presently indeterminate area within the constitutional admiralty power which is also subject to the jurisdiction of the States. The instant case, however, is "comfortably within the circle and far from the penumbra" (*id.* at 248) of the admiralty jurisdiction which is exclusively federal, for it involves the terms and conditions of employment of seamen who work on American flag ships on the high seas. In a relatively recent case which acknowledged the existence of some residual state power, *Kossick* v. *United Fruit Co.*, 365 U.S. 731, Justice Harlan stated: "Without a doubt a contract for hire

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[11] In addition the nationality of officers and crews is effectively controlled by 46 U.S.C. 672(a) so as to require as a practical matter 75% U.S. citizenship for unlicensed members of the crew. The same statute specifies the requirements for certification as an able seaman by the Coast Guard. Suspension or revocation of certificates of service for misconduct may occur following appropriate notice and hearing before a hearing officer of the Coast Guard. 46 U.S.C. 672(h); 46 U.S.C. 239(g). This statute effectively regulates the very right to go to sea.

Hours of work at sea or in safe harbor are governed by 46 U.S.C. § 673, as is work on holidays. The same statute covers assignment of work; a seaman who has signed on the Deck Department may not be required to work in the Engine Department, and vice versa.

Discipline of seamen, including criminal liability for drunkenness or neglect of duty is covered by a series of enactments. 46 U.S.C. § 701; 18 U.S.C. § 2196. Seamen are also protected against cruelty or abandonment. 18 U.S.C. § 2191; 18 U.S.C. § 2195.

either of a ship or of the sailors and officers to man her is within the admiralty jurisdiction. 1 Benedict, Admiralty, 366." (*Id.* at 741.)

In *Kossick*, it was held that the New York statute of frauds did not apply to an oral contract made in New York whereby a ship owner agreed to assume all consequences of faulty medical treatment of a seaman by the Public Health Service Hospital. *Kossick* reaffirmed and even extended *Union Fish Co.* v. *Erickson*, 248 U.S. 308 (1915), where the Court held that the California statute of frauds was not applicable to an oral agreement made in California for the performance aboard ship of a master's services. The Court said:

> "In entering into this contract, the parties contemplated no services in California. They were making an engagement for the services of the master of the vessel, the duties to be performed in the waters of America, mainly upon the sea. The maritime law controlled in this respect, and was not subject to limitation because the particular engagement happened to be made in California." *Id.* at 313.

So here "the parties contemplated no services in Texas." Rather, they "were making an engagement for the services of [the seamen] of the vessel, the duties to be performed in the waters of America mainly upon the sea."

Thus, the answer to the rhetorical question posed by the majority below is that for the purposes of the instant case the high seas are a jurisdiction separate from the individual states and that in this jurisdiction the sovereign law-making power is the United States by virtue of art. III, § 2. This case does therefore present a genuine choice-of-law

problem, just as did *Giant Food, Northland Greyhound Lines* and *Western Electric, supra.* And, for present purposes the critical point is that the high seas, like the District of Columbia, are a jurisdiction in which there is no right to work law. Congress, the supreme legislative authority by virtue of art. III, § 2 over American flag vessels on the high seas, and over the District of Columbia under art. I, § 8, cl. 17, has chosen not to exercise that authority to forbid union security agreements, just as Louisiana has chosen not to exercise its § 14(b) option. Texas' authority to apply its right to work law in this case is governed by the same analysis as if the work performed on the high seas on this record were actually performed in Louisiana.

Again, to put the matter another way, § 14(b) only preserves the authority of the States to regulate union security agreements which they had prior to the Wagner Act; that is, it is a disclaimer of a legislative attempt to exercise the commerce power in a manner to oust pre-existing State authority. But the States enjoyed no such authority with respect to employment relations on the high seas. Indeed, as *Flores* teaches, the States had surrendered much of that authority even under the Articles of Confederation. And the internal economy of a ship on the high seas is at the heart of the federal maritime jurisdiction.

For the converse of the proposition that the law governing the internal economy of an American ship on the high seas is the law of the United States is that it is not subject to State law. The latter proposition was early declared by Mr. Chief Justice Marshall in characteristically unmistakable terms:

> "What, then, is the extent of jurisdiction which a

state possesses?

"The answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power." *United States* v. *Bevans*, 3 Wheat. 336, 386-387.

CONCLUSION

In our view the critical contact governing § 14(b) choice of law problems is the place where the employees work. Here, that place is an American flag vessel on the high seas. There, the United States is the law-making authority and it has not exercised that authority (as did Texas where it has such authority) to forbid union shop and agency shop agreements. Accordingly, the agency shop agreement in this case is lawful as to all employees.[12] The

[12] The Court of Appeals did not determine whether, "weigh[ing] all of the contacts in the context of our national labor policy" (Pet. App. 5a), those of the high seas or those of Texas were "qualitative[ly]" (*id.*, 6a) more significant. We submit that Texas law cannot prevail in making this comparison when Congressional policy and the facts in this case are viewed more accurately than in the majority opinion. For, as we have shown earlier, neither the place of hire nor the residence of the seamen plays an important role in terms of Congressional policy; these are the factors to which the majority gave the greatest weight and which it said justified the application of Texas' law to this situation. Moreover, the Court was plainly in error in its statement that "As many as 60% of the applicants actually come from the Texas labor force," (Pet. App. 4a, repeated at Pet. App. 15a), a matter of particularly great importance to the majority (*id.*, 14a-15a). That fact is not only unsupported by the record but is contrary to the undisputed evidence, and the findings (Pet. App. 2d-3d, ¶ 11) that 123 of the 289 seamen (that is, well under half) have their residence in Texas. The circumstance that both the residence and the place of hire varies from employee to employee is yet another reason for holding that these contacts are entitled to little weight compared with the facts common to all employees relating to their place of work.

A final point remains to be made. If, contrary to all the foregoing, the place of hire is given decisive weight, the agency shop agreement should be preserved as to those employees who make their job applications in New York; and, if residency is controlling, it should be preserved as to the employees who reside in jurisdictions which have not outlawed the agency shop. The contract would not thereby be "rewritten," as the majority in the Court of Appeals charged (Pet. App. 21a); it would be respected. For Article 1 of the agreement (A. 285) provides:

II. VALIDITY

In the event that any provision of this Agreement shall at

judgment of the Court of Appeals should be reversed, and the case remanded with directions to enter a judgment which so declares.

Respectfully submitted,

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> any time be declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions, not so declared invalid, shall remain in full force and effect, and both parties will meet within ten (10) days to attempt to work out a new Agreement on those matters that were invalidated.
>
> In the event that any competent authority enacts any law or regulation requiring additional compensation to personnel covered by this Agreement, the provisions of this Agreement pertaining to wages and vacation-paid leave may be cancelled by the Company. In the event of such cancellation, both parties to the Agreement will meet within ten (10) days to attempt to work out a new agreement on those matters. This is not for the purpose of reducing monthly compensation through wage rates or vacation-paid leave."

This brings into play the principle of *Labor Board* v. *Rockaway News*, 345 U.S. 71, 78-79:

> "The whole contract shows respect for the law and not defiance of it. The parties, who could not foresee how some of the provisions of the statute would be interpreted, proposed to go as far toward union security as they are allowed to go, and this is their right; and they proposed to go no farther, and that is their whole duty."

Nor is there any justification for the majority's "unwilling-[ness] to hold that there is an identifiable group of employees who are not subject to the Texas law." (Pet. App. 21a.) For if the majority view of the choice-of-law problem is accepted, there is no justification for applying Texas law to employees who lack the contacts with that State which are critical on that view. Nor would it be necessary at this time to identify the individual employees as to whom the agency shop would or would not be lawful. This is a declaratory judgment suit: If the Court declares the standard, the parties can be relied upon to apply it, with resort to the District Court in the unlikely event of further controversy.

Supreme Court, U. S.
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No. 74-1254

In the

Supreme Court of the United States

October Term, 1975

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO
AND
MARITIME LOCAL NO. 8-801 OF
OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO,
Petitioners,

v.

MOBIL OIL CORPORATION,
MARINE TRANSPORTATION DEPARTMENT,
GULF-EAST COAST OPERATIONS,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT

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In the

Supreme Court of the United States

October Term, 1975

No. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO
AND
MARITIME LOCAL NO. 8-801 OF
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MOBIL OIL CORPORATION,
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GULF-EAST COAST OPERATIONS,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals *en banc* (Pet. App. A)[1] is reported at 504 F.2d 272. The opinion of the three-judge panel of the court of appeals (Pet. App. B) is reported at 483 F.2d 602. The district court's findings of fact, conclusions of law and judgment (Pet. App. D) are reported at 81 LRRM 2051 and at 1972 A.M.C. 1712.

[1] References designated "Pet. App. ....., p. ....." are to pages in the appendices to the Petition for a Writ of Certiorari. References designated "A. ....." are to pages in the printed Single Appendix. References designated "Pet. ....." are to pages in the Petition for a Writ of Certiorari. References designated "Pet. Br. ....." are to pages in Petitioners' brief. References designated "Sol. Gen. Br. ....." are to pages in the *amicus curiae* brief filed on behalf of the United States in this case.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for a Writ of Certiorari.

QUESTION PRESENTED

Whether Texas has a sufficient interest in the employment relationship between Respondent and the employees in its tanker fleet, headquartered at Beaumont, Texas, so that under Section 14(b) of the National Labor Relations Act, as amended, the Texas right-to-work law applies to an agency shop clause in a collective bargaining agreement covering such employees.[2]

STATUTES INVOLVED

The pertinent statutory provisions are cited and set forth in the Petition for a Writ of Certiorari (Pet. App. C).

STATEMENT

On September 16, 1971, a complaint was filed on behalf of Respondent, Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations (hereinafter "Respondent")[3] against petitioner unions, Oil, Chemical and Atomic Workers International Union AFL-CIO and its Maritime Local No. 8-801 (hereinafter "Petitioners") in the United States District Court for the Eastern District of Texas, Beaumont Division (A. 6). The complaint sought a declaratory judgment that an agency shop clause[4] in the collective bargaining agreement between Respondent and Petitioners (hereinafter "Agreement") violated the Texas right-to-work law (Pet. App. A, p. 2). After a full evidentiary hearing, the district court concluded that, pursuant to section 14(b) of the National Labor Relations Act, as amended (hereinafter "Act"), the Texas law applied to the parties' employment relationship and rendered the agency shop provision invalid (*Id.*).

On August 10, 1973, a panel of the court of appeals (by a 2-1 vote) reversed the district court's judgment (Pet. App. B, p. 13). After rehearing *en banc*, the judgment of the district court was affirmed (by an 8-6 vote) on November 8, 1974 (Pet. App. A, p. 22).

I. The Facts

Respondent operates 8 oceangoing tankers which primarily move between Texas ports and ports on the United

[2] In the Petition for a Writ of Certiorari a second issue involving deferral of this proceeding to the National Labor Relations Board (hereinafter "NLRB") was presented (Pet. 2). Although the Court granted certiorari without restriction, Petitioners have since abandoned this issue (Pet. Br. 2). This issue of deferral is, therefore, inapropriate for consideration by the Court. Moreover, the Solicitor General has recognized that such deferral is not required. See Sol. Gen. Br. at 23-24. For Respondent's argument with respect to the correctness of the *en banc* court's holding as to the inappropriateness of deferral, see Respondent's brief in opposition to the Petition for a Writ of Certiorari at 11-12.

[3] Contrary to the labor agreement's designation of the contracting parties, Petitioners have erroneously denominated Respondent as "Mobil Oil Corporation" in their Petition for a Writ of Certiorari and in their brief on the merits. This misnomer appears to be a deliberate effort to obscure the Texas seat of Respondent's operations. There is no question that Respondent is an operating unit of Mobil Oil Corporation conducting its business from Beaumont, Texas. At all stages of the proceedings before the district court, Respondent was correctly identified by Petitioners.

[4] For purposes of permitted state prohibitions under Section 14(b), an agency shop clause can be regarded as the substantial equivalent to a union shop clause since this Court in *Retail Clerks International Assn. v. Schermerhorn*, 373 U.S. 746 (1963), held that each of these clauses can be prohibited pursuant to Section 14(b), and the Attorney General of the State of Texas has declared each of these clauses to be violative of Texas right-to-work law. See pp. 7-8 *infra*. An agency shop clause requires all employees, whether or not union members, to pay union initiation fees and union dues within a specified time after employment and to continue paying dues. A union shop clause requires all employees to become union members within a specified time and to remain so. In either case the employee is subject to discharge if the employee does not comply.

States east coast (A. 117).[5] Petitioners are the collective bargaining representative for the unlicensed seafaring employees who work on these tankers (Pet. App. B, p. 5).

Since April 1, 1962, Respondent's headquarters have been located in Beaumont, Texas (A. 109; Pet. App. A, p. 3). All Respondent's personnel are supervised, controlled and instructed by its manager or his staff in Beaumont (A. 55-60). Similarly, all budgeting, expenditures, maintenance and supply requests for Respondent's tanker operations are processed in Beaumont (A. 57). Respondent's manager who controls its entire operations, its marine superintendent who directs the ship masters, its personnel director who is responsible for employee relations, its port steward who handles the provisioning of tankers, its port engineer who supervises the maintenance and repair of tankers, its administrative supervisor who is responsible for budgeting and supply expenditures, and other office staff all live and work in Beaumont, Texas (A. 54-60).

[5] Inspection of a map will reveal that the Texas ports at which these tankers dock (Beaumont, Houston, Corpus Christi, and Brownsville) are all inland ports that can be reached only through travel along inland rivers and channels in the State of Texas. The following chart demonstrates the round-trip distance and travel time between each of these ports and the Gulf of Mexico:

Port	Distance (miles)	Time (hours)	Pilot Pickup
Beaumont	84	12	Sabine Bar
Houston	117	12	Galveston Bar Sea Buoy
Corpus Christi	50	6	Aransas Pass Sea Buoy
Brownsville	34	6	Brazos Santiago Sea Buoy

Because of the geographical characteristics of these Texas ports, Respondent's seafaring employees do spend a significant portion of their work time within the State of Texas. To this time must be added the substantial additional time the tankers are tied up at dockside, when the employees are also performing work under the Agreement. The importance of this aspect of their employment relationship with Respondent becomes apparent in subsequent discussion of the Solicitor General's erroneous statement that these employees perform no work within the State of Texas. See pp. 29-31 *infra*.

From its headquarters in Beaumont where these fleet support operations are centered, Respondent administers the Agreement with the Petitioners (Pet. App. D, p. 4). Petitioner local union also maintains a permanent office in Beaumont, Texas (A. 92). The local union president is a resident citizen of Houston, Texas and the local union vice-president is a resident citizen of San Augustine, Texas; both work at the Beaumont union office (A. 92, 192).

All grievances filed pursuant to the Agreement that are not settled through lower level, informal conferences, are submitted to and considered by Respondent's manager at Beaumont, and either approved, rejected or compromised through direct dealings with Petitioners in Beaumont (A. 95-98; Pet. App. D, p. 3).[6] Furthermore, all monthly checkoffs of union dues required by the Agreement are computed, deducted from pay, and forwarded to Petitioners from Texas (A. 158-161; Pet. App. D, p. 3). Respondent's manager is frequently and routinely in conference with the Petitioners' officials at Beaumont during which time the Agreement is reviewed and interpreted (A. 98-99). When Petitioners believed Respondent had committed an unfair labor practice in 1969 with reference to vacation benefits, a charge filed by Petitioners with the regional office of the NLRB in Houston, Texas named Beaumont as Respondent's headquarters (Pl. Ex. 7, A. 236).

Respondent's entire personnel records are maintained at its Beaumont headquarters (A. 59, 74; Pet. App. A, p. 3; Pet. App. D, p. 3). Wages are paid primarily by payroll check, but partly in cash. All payroll checks are written in and mailed from Texas (A. 65-69; Pet. App. A, p. 3), and all cash handed to employees aboard ship is placed on

[6] This is the most important of all grievance steps for if the dispute is not settled at this level, the matter is submitted to arbitration. In fact, of some 20 grievances considered at this level, 16 were settled by Respondent's manager in Beaumont (A. 96; 140-141).

board in Texas (Pet. App. D, p. 3).[7] Federal income and social security taxes withheld from personnel employed on Respondent's tankers are remitted from Texas to an Internal Revenue Service office in Texas (A. 68; Pet. App. D, p. 3). Texas is, moreover, the only state collecting unemployment compensation insurance premiums on all personnel employed aboard Respondent's tankers; Texas does so regardless of the designation of home address or shipping port (A. 93; Pet. App. D, p. 2).

All of the 289 seafaring employees employed by Respondent are headquartered in Beaumont (A. 63; Pet. App. D, p. 2), and 152 of them have requested Respondent to list Beaumont, Texas, as their shipping port (A. 64; Pet. App. D, p. 3).[8] Furthermore, 123 of such employees have reported to Respondent that Texas is their state of residence (A. 63; Pet. App. D, pp. 2-3). Sixty percent of all applicants for employment make their initial applications in Texas and all final employment decisions are made at Respondent's Beaumont headquarters (A. 75-76; Pet. App. A, p. 4; Pet. App. D, p. 3). Similarly, all final decisions to terminate employees

[7] The pay of all seafaring employees consists of "allotment" checks mailed from the State of Texas to the designated dependents of such employees, "vacation" checks sent to such employees from Beaumont, and cash carried aboard ship at Beaumont and handed to such employees (A. 65-69). During a representative year, 1971, approximately $5,907,000.00 in pay was disbursed by Respondent as follows: $1,907,000.00 in cash was carried aboard ship at Beaumont for subsequent payment; $1,365,000.00 in vacation checks were prepared at and mailed from Respondent's headquarters in Beaumont; $1,117,000.00 in allotment checks were prepared in and sent from Texas as requested; and $1,431,000.00 in federal income tax and FICA deductions were computed and paid in Texas (Pl. Ex. 3; A. 238). *Thus, out of each $6.00 in wages paid by Respondent, $4.00 changes hands in the State of Texas.* During the same representative period only $69,700.00 was paid from the New York offices of Respondent — a figure which is less than 1.2% of the amounts actually distributed from the State of Texas (A. 69-71). This small amount included standby pay handled by a branch office that is staffed by 3 people and directed by Respondent's manager in Beaumont as an adjunct to his office.

[8] Petitioners indicated that 197 unlicensed employees have designated New York as their shipping port (Pet. Br. 5). This number should read 107 (A. 64, 237). Texas counsel for Petitioners has orally agreed to make an appropriate correction.

are made in Beaumont, with the actual termination being carried out solely in Texas (Pl. Ex. 6, A. 259; A. 76-77; Pet. App. A, p. 4).[9]

All seafaring employees on Respondent's tankers are regularly present in Texas since Respondent's tankers in their normal trade either begin or end voyages at Texas ports, or travel between Texas ports (A. 115; Pet. App. D, pp. 3-4). At all times many of Respondent's seafaring employees are present in Texas, either on board Respondent's tankers or on paid vacation or shore leave time (Pet. App. D, p. 4).[10] All of Respondent's seafaring employees spend 10 to 20 percent of their work time in Texas (Pet. App. D, p. 7).

Respondent's periodic employee newsletter, entitled *Mobil Mariner*, is datelined, written, edited, printed, published, and mailed from Beaumont (Pl. Ex. 5, A. 275). Similarly, Respondent issues to newly employed seamen a booklet entitled WELCOME ABOARD!, written and published in Texas and which recites that the mailing address of such employees will be "John Doe, S/S 'Name of Ship', Mobil Oil Corporation, Gulf-East Coast Operations, P. O. Box 3444, Beaumont, Texas 77704" (Pl. Ex. 4, A. 247).

II. The Agreement and Texas Law

Respondent and Petitioners were parties to an Agreement (Pl. Ex. 1, A. 279-329) negotiated and initially executed

[9] While the masters of Respondent's ships can remove seamen from their ships and put these men ashore at any port, Respondent's manager can reassign these seamen to other ships in Respondent's fleet *since only the manager acting in Texas has the authority to discharge seamen from Respondent's employ* (A. 195, testimony of local union officer).

[10] Respondent's unlicensed employees work a 120-day cycle consisting of approximately 90 days aboard ship and approximately 30 days ashore on vacation/paid leave; however, during such vacation/paid leave time, the payment of wages continues and such personnel remain employees of Respondent (A. 66-67).

in New York but prepared in final form and re-executed in Texas (A. 105-109; Pet. App. A, p. 4 n. 3),[11] containing the following agency shop clause (A. 281; Pet. App. B, p. 4):

> 2. UNION SECURITY
>
> b. For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within thirty-one days from the employment date.

During the term of the Agreement, Respondent learned that the Attorney General of Texas had determined "* * * that the 'Agency Shop' clause in a contract between a labor union and management contravenes and is in violation" of Texas law. See Tex. Att'y Gen. Op. No. WW-1018 (1961) (Pl. Ex. 8, A. 261-67). See also Vernon's Tex. Rev. Civ. Stat. Ann. Art. 5154a, § 8a, Art. 5154g, § 1, Art. 5207a, § 2 (1971) (Pet. App. C, p. 2).[12] Respondent accordingly informed Petitioners that the agency shop clause of the Agreement was illegal, and sought to conform the Agreement to Texas law by deleting this clause (Pet. App. A, p. 2).

Petitioners rejected Respondent's request to conform the Agreement and, instead, advised all covered employees that failure to make payment of regular dues and fees would result in termination (Pl. Ex. 10, A. 270-71). Respondent thereupon filed this action seeking a declaratory judgment that the agency shop clause violated Texas right-to-work law.[13]

[11] The Agreement does not contain a choice-of-law provision (Pet. App. A, p. 4 n. 3).

[12] It was conceded by Petitioners in the court of appeals (during oral argument before the 3 judge panel) and recognized by the district court and all participating circuit judges, that the Texas right-to-work law prohibits agency shop clauses. This conclusion is not now challenged by either Petitioners or the Solicitor General.

[13] While Section 8(a)(3), 29 U.S.C. § 158(a)(3) (1970), of the Act permits union security agreements within certain limits, Section 14(b), 29 U.S.C. § 164(b) (1970), of the Act allows state right-to-work laws which prohibit such agreements. Section 14(b) provides:

> Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

III. The District Court Proceedings

After a two-day trial, the district court made findings of fact as to the nature and extent of Respondent's contacts with Texas (Pet. App. D, pp. 1-5). In its conclusions of law, the district court held that "[t]he application * * * of the agency shop clause (Article I, ¶2b) of the collective bargaining agreement to any or all of Plaintiff's operations and employees contravenes the Texas right-to-work statutes (citations omitted)", and thus "[t]he agency shop clause * * * is void and unenforceable" (Pet. App. D, pp. 6-7).

IV. The Court of Appeals Proceedings

A divided panel of the court of appeals reversed, stating that the district court " * * * failed to give proper consideration to the most important factor in the case, that is, the situs of the work performance of the covered employees" (Pet. App. B, p. 11).

On rehearing *en banc*, the panel decision was overruled and that of the district court affirmed. In its opinion, the *en banc* court noted that the parties, the district court, and the panel had analyzed the employment relationship between Respondent and its seafaring employees in terms of its contacts with Texas and other jurisdictions and that all had concluded that the contacts with Texas "* * * far outweigh[ed] contacts with any other *state* * * *" (Pet. App. A, p. 3; emphasis in original).[14] The *en banc* court then explained that, while the panel had found that job situs was "* * * the determinative factor in deciding whether the Texas law is applicable * * *", it considered the approach of the panel too "limited" and instead chose "* * * to weigh all of the contacts in the context of our national labor policy" (Pet. App. A, p. 5).

[14] In fact, the *en banc* court stated that the record evidence suggested that "from the seaman's first encounter with the company to his last, the Beaumont headquarters is constantly in the picture" (Pet. App. A, p. 4).

In its examination of the issue before it,[15] the *en banc* court utilized a "multi-dimensional" analysis: (1) it examined this employment relationship in terms of its contacts with Texas and other jurisdictions; (2) it studied the language and legislative history underlying the Taft-Hartley Act and the 1951 amendment to the Railway Labor Act; and (3) it scrutinized the relative interests of Texas and other jurisdictions in applying their laws to this employment relationship (Pet. App. A, p. 21). On the basis of this analysis, the *en banc* court concluded that the contacts between *this* employment relationship and Texas predominate over those of any other state and thereby give Texas a significant interest in applying its right-to-work law (Pet. App. A, pp. 7-8). Moreover, the *en banc* court found that national policy would be fostered by allowing Texas to apply its right-to-work law to this employment relationship (Pet. App. A, pp. 7, 17).

There were two dissenting opinions. The dissent on the merits, like the majority opinion of the panel, would have accorded job situs conclusive weight (Pet. App. A, pp. 22-31). The second dissenting opinion urged deferral of this

[15] The *en banc* court articulated the issue as follows:

> Whether the agency shop clause in this collective bargaining agreement is valid or not depends entirely upon whether the Texas right-to-work law applies to this employment relationship. In determining whether the Texas law is applicable, we must decide whether it was the intent of Congress in writing section 14(b) to permit a state to apply its right-to-work law to an employment relationship which has contacts with the state as described by the evidence presented to the district court. (Pet. App. A, p. 6; footnote omitted).

At earlier stages of these proceedings, Petitioners also urged as a separate issue that no actual case or controversy existed between Petitioners and Respondent as to the agency shop clause in the Agreement because the Agreement was soon to expire after institution of suit. The district court and all participating circuit judges rejected this contention. Moreover, due to the continuing relationship between Petitioners and Respondent and the likelihood of recurrence of the present dispute in the absence of final resolution, the conclusion of the courts below is clearly correct. See *United States v. Trans-Missouri Freight Ass'n.*, 166 U.S. 290 (1897), wherein this Court held that continuity of relationship and probability of recurrence are sufficient to dispel doubts as to mootness.

action to the NLRB (Pet. App. A, pp. 31-36), a point not now in issue.

SUMMARY OF ARGUMENT

The fundamental inquiry in this case is whether Section 14(b) of the Act authorizes application of Texas right-to-work law to the agency shop clause covering Respondent's seafaring employees. Both the language of Section 14(b) of the Act and its underlying legislative history clearly establish that the concern of Congress was with the effect of union security agreements on the entire employment relationship between employer and employee — not merely with the place where the employee may be performing work at any given moment. Therefore, whether a state under Section 14(b) may ban a union security device such as the agency shop clause, is to be determined by looking to the sufficiency of a state's interest in applying its law to the whole employment relationship.

The language of Section 14(b) evidences that the concern of Congress was not narrowly limited. Section 14(b) sanctions the application of state right-to-work legislation "* * * to agreements requiring membership in a labor organization as a condition of employment in any State * * * in which such *execution or application* is prohibited by State * * * law." (emphasis added) While Section 8(a)(3) of the Act declared the closed shop illegal, this section did permit other types of union security devices (such as the union shop and the agency shop clause involved in this case). These forms of permissible union security arrangements are given effect for the duration of the covered employment relationship. Those persons unwilling to conform simply cannot retain a job. Union fees and dues are paid throughout the employment relationship under any union security clause, and employees who decline to make the required payments are subject to discharge at any time.

Aware of these facts, Congress broadly authorized states in which union security clauses are to be *executed* or *applied* to develop and apply their own policy. The legislative history underlying Section 14(b) supports this interpretation.

It shows conclusively that Congress was concerned with the impact of union security clauses on the entire employment relationship — that is, not only on hiring and termination, but also on the course of such relationship.

Looking to the whole employment relationship in this case, it is clear that Texas, as the court of appeals sitting *en banc* held, has a sufficient interest in applying its right-to-work law to the agency shop clause. Indeed, it has not been asserted that any state other than Texas has a sufficient interest in this employment relationship.

Contrary to the suggestion of Petitioners and the Solicitor General as *amicus curiae*, looking to the whole employment relationship will not result in extraterritorial application of Texas law, because any state with a greater interest in this employment relationship would apply *its* law. Nor will uncertainty result in any but the rarest of cases. And manipulation cannot be expected to result from looking to the entire employment relationship because union security clauses involve no costs to the employer, and remedies are available under the Act against any employer who relocates to escape a union.

Petitioners and the Solicitor General have urged that the sole determining factor in assessing the sufficiency of a state's interest under Section 14(b) is job situs, thereby seeking for workers on the high seas immunity from the application of *any* state law. This would result in judicial creation of an exception to Section 14(b) for seafaring employees, usurping the role of Congress. When Congress desired to prohibit the application of state right-to-work laws in the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (1970), it did so expressly. And when it desired to exempt specific industries (such as the construction, apparel and clothing industries) from a portion of the Act, it did so by explicit statutory provision. See Section 8(e) of the Act, 29 U.S.C. § 158(e) (1970). But Congress has not seen fit to create a special exemption for seafaring employees.

The Solicitor General agrees that the traditional legal status accorded to seamen does not require the creation of

an exception to Section 14(b). The Taft-Hartley Act, and the law developed under this act with regard to collective bargaining agreements governing many aspects of a seaman's employment relationship, have been applied without exception by both Congress and the courts to maritime employees. The assertion that Section 8(a) (3) of the Act alone applies to union security clauses is contrary to Congress' clear direction that state laws apply and would prefer the rule stated in Section 8(a) (3) to state right-to-work laws.

Further, the job situs test proposed by Petitioners and the Solicitor General on the basis of the 3 old decisions of the NLRB is not supported by those decisions. In each of those cases, the NLRB looked to the entire employment relationship and not to job situs alone. If, as the Solicitor General argues, "a State has a sufficient interest in applying its policies only if the employee performs *some* work within the State" (Sol. Gen. Br. 15), then the Texas right-to-work law applies in this case. The district court found that Respondent's seafaring employees perform 10 to 20 percent of their work in the State of Texas.

ARGUMENT

I. Section 14(b) of the Act authorizes application of the right-to-work law of the State of Texas to the employment relationship in this case.

A. The law of that State with sufficient interest in the employment relationship is to be applied under Section 14(b).

Sections 8(a) (3) and 14(b) of the Act, 29 U.S.C. §§ 158(a) (3) and 164(b) (1970), added by the Taft-Hartley Act of 1947 , were designed by Congress to remedy the abuses it perceived in compulsory unionism. S. Rep. No. 105, 80th Cong., 1st Sess. 5-7 (1947). These sections *together* comprise the remedy adopted by Congress. In Section 8(a) (3), while Congress prohibited the closed shop, it also authorized the union shop and agency shop — that is, Congress provided that union membership or dues in lieu thereof could be required as a condition of employment thirty days

after hire. In Section 14(b), however, Congress empowered[16] the states to adopt a more far-reaching solution to the problem of compulsory unionism by outlawing not only the closed shop, but the union shop and other forms of mandatory union membership as well. Section 14(b) provides:

> Nothing in this subchapter shall be construed as authorizing the *execution or application of agreements* requiring membership in a labor organization as a condition of employment in any State or Territory in which such *execution or application* is prohibited by State or Territorial law. (emphasis added)

The Texas right-to-work law is an exercise of that power.

In authorizing the application of state right-to-work laws in Section 14(b), Congress intended that each state develop its own policy with respect to the execution and application of union security arrangements such as the agency shop clause.[17] As a consequence, in determining whether Section 14(b) authorizes the application of a state right-to-work law, the touchstone must be whether the state has a sufficient interest in applying its policy to the employment relationship involved.

[16] This was indisputably a valid exercise of the power of Congress under the Commerce Clause [Art. I, Sec. 8, Cl. 3] of the Constitution of the United States. *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408 (1946). As decided in the leading case of *Cooley v. Board of Wardens of the Port of Philadelphia*, 12 How. (53 U.S.) 299 (1851), Congress has plenary power to enact laws regulating commerce but the states have inherent power to enact laws regulating maritime or other commerce if such state laws cover a local matter not requiring a single uniform rule nationally applied and such state laws are not in conflict with laws enacted by Congress. Cf. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973).

[17] This Court held in *Retail Clerks International Assn. v. Schermerhorn*, 373 U.S. 746 (1963), that Section 14(b) allowed the states to prohibit agency shop clauses. Thus, as previously noted, for purposes of Section 14(b) and permitted state prohibitions on union security devices, the agency shop and the union shop can be treated as substantially equivalent.

B. The sufficiency of a state's interest in applying its law is to be determined by looking to the whole employment relationship.

Contrary to the argument of Petitioners and the Solicitor General, no single factor can be conclusive as to whether a state has a sufficient interest in an employment relationship to justify application of its right-to-work law. Rather, as the *en banc* court held, the sufficiency of a state's interest is to be determined by looking to the whole of the employment relationship. This approach is mandated both by the language of Section 14(b) and its underlying legislative history.

1. The language of Section 14(b).

Section 14(b) permits the states to prohibit "* * * the execution or application of agreements requiring membership in a labor organization as a condition of employment." Thus, the focus of Section 14(b) is on the *application* of such agreements, and not on any single event or incident of the employment relationship.[18]

Obviously, a contract provision requiring union membership or the payment of union dues in lieu thereof as a condition of employment must receive its *application* throughout the duration of the employment relationship. While Section 8(a)(3) provides that union membership cannot be required as a condition of employment until 30 days after hire, union security agreements continue to play a substantial part in the hiring process by foreclosing employment of persons who are unwilling to abide by them after that brief

[18] Prior versions of the bill that was ultimately enacted as Section 14(b) of the Taft-Hartley Act employed language which on its face is more restrictive than that actually used. H.R. 3020, the version of the bill introduced by Congressman Hartley, permitted union shop agreements "* * * if * * * not in conflict with the law of any State in which the agreement is *to be carried out*." (emphasis added) See 1 Leg. Hist. LMRA 183-84. The accompanying House Report stated that under this provision such agreements would be valid "only if they are valid under the laws of any state in which they are *to be performed*." (emphasis added) H.R. Rep. No. 245, 80th Cong., 1st Sess. at 34, 1 Leg. Hist. LMRA 294-406 at 325. Also, this Court has held that "* * * Congress * * * give[s] the right of way to state laws barring the execution and *enforcement* of union-security agreements." *Retail Clerks International Ass'n v. Schermerhorn*, 375 U.S. 96, 103 (1963) (emphasis added).

period. Moreover, for the entire duration of their employment, employees covered by such agreements are subject to discharge should they refuse to continue to make required payments to the union.[19]

Thus, the "execution or application" of agreements covered by Section 14(b) is not limited to a particular time, place or event. Rather, since such agreements are applied both with respect to and throughout the employment relationship, the test for sufficiency of a state's interest as to application of its right-to-work law to such relationship must necessarily concentrate on the whole of such relationship. The language chosen by Congress specifically recognizes the necessity to examine the entire employment relationship. Congress did not look solely to the place of hiring or termination or where the job was performed; instead, with the knowledge that agreements of the sort covered by Section 14(b) are significant from the time of hire to termination of employment, Congress specified that the law of the state where such agreements are to be executed or applied — that is, where the employment relationship is centered — will control.

2. The legislative history of Section 14(b).

The legislative history underlying Section 14(b) supports this interpretation. It manifests Congress' intent that a state's interest in applying its policy is to be determined by looking to the entire employment relationship.

Clearly, a principal concern of Congress was with hiring, and, as a corollary, discharges of employees who at any time after hire refuse to abide by agreements within the scope of Section 14(b). The problem of compulsory union membership was one of the major issues confronting Congress at the time of the enactment of Sections 8(a)(3) and 14(b). The Senate Report noted that "mature deliberation"

[19] Federal courts have generally recognized that union security devices in a labor contract are presumptively coercive in that employees subject to these devices are compelled to comply or otherwise suffer the consequences. See *NLRB v. Forest City/Dillon-Tecon Pacific*, 522 F. 2d 1107 (9th Cir. 1975).

had been given to the problem and that the "solution" embodied in those sections resulted from accommodation of employer and employee interest in unrestricted employment and union interest in sharing the costs of collective representation. S. Rep. 105 at 5-6, 1 Leg. Hist. LMRA at 411-412. Congress discussed at length the abuses of compulsory unionism and noted that these problems were especially severe in the maritime industry:

> It is clear that the closed shop which requires preexisting union membership as a condition of obtaining employment creates too great a barrier to free employment to be longer tolerated. In the maritime industry and to a large extent in the construction industry union hiring halls now provide the only method of securing employment. This not only permits unions holding such monopolies over jobs to exact excessive fees but it deprives management of any real choice of the men it hires. Extension of this principle to licensed deck and engine officers has created the greatest problems in connection with the safety of American vessels at sea. (S. Rep. 105 at 6, 1 Leg. Hist. LMRA at 412.)

The legislative history of Section 14(b) is replete with similar references to the perceived impact of compulsory unionism on the hiring process,[20] and thus demonstrates that in enacting Sections 8(a)(3) and 14(b) Congress sought to alleviate such consequences.

However, the legislative history of Section 14(b) also demonstrates that the concern of Congress with compulsory unionism was not limited solely to its effects on

[20] See e.g., H.R. Rep. No. 245 at 4, 1 Leg. Hist. LMRA 295:

> For the last 14 years, as a result of labor laws ill-conceived and disastrously executed, the American workingman has been deprived of his dignity as an individual. He has been cajoled, coerced, intimidated, and on many occasions beaten up, in the name of the splendid aims set forth in section 1 of the National Labor Relations Act. His whole economic life has been subject to the complete domination and control of unregulated monopolists. He has on many occasions had to pay them tribute to get a job. He has been forced into labor organizations against his will * * * He has been denied any voice in arranging the terms of his own employment. * * *

hiring. Rather, Congress recognized that a contract provision requiring compulsory union membership affected the whole employment relationship. Indeed, Congress specifically noted that the impact of a union security provision did not cease after hire and frequently resulted in termination. The Senate Report states:

> Numerous examples were presented to the committee of the way union leaders have used closed-shop devices as a method of depriving employees of their jobs, and in some cases a means of securing a livelihood in their trade or calling, for purely capricious reasons. In one instance a union member was subpenaed to appear in Court, having witnessed an assault upon his foreman by a fellow employee. Because he told the truth upon the witness stand, the union leadership brought about his expulsion with a consequent loss of his job since his employer was subject to a closed-shop contract.
>
> Numerous examples of equally glaring disregard for the rights of minority members of unions are contained in the exhibits received in evidence by the committee. (S. Rep. No. 105 at 6, 7; 1 Leg. Hist. LMRA 412, 413.)

Congress thus evidenced its concern with the continued impact of union security clauses on employees subsequent to hire. The legislative history of Sections 14(b) and 8(a)(3) makes plain, then, that the focus of Congress' concern was on the effects of union security provisions on the entire employment relationship.

C. Texas has a sufficient interest in applying its right-to-work law to the employment relationship in this case.

As the district court and the court of appeals sitting *en banc* found in light of the language and legislative history of Section 14(b), Texas plainly has sufficient interest in the application of its right-to-work law to the employment relationship in this case. Examination of the substantial contacts this employment relationship has with Texas (set out

at length in the Statement portion of this brief, pp. 3-7 *supra*) demonstrates that *all* of the crucial aspects of such employment relationship occur in Texas.

All final hiring *and* firing decisions are made in Texas, and 60 percent of all employment applications are submitted in Texas. All of Respondent's personnel are supervised in and from Texas, and all personnel records are maintained in Texas.

All payroll checks are written in and mailed from Texas. All monthly checkoffs of union dues are computed in Texas, deducted from wages in Texas, and mailed to the union from Texas. All cash paid employees aboard ship is placed on board in Texas. All federal withholding taxes are calculated in and remitted from Texas to an Internal Revenue Service office in Texas. Texas is the only state collecting unemployment compensation insurance premiums.

Of Respondent's 289 unlicensed employees, 152 of them have requested Respondent to list Beaumont, Texas, as their shipping port and 123 of them have reported to Respondent that Texas is their state of residence. No other state approaches this qualitative or quantitative level as to the workforce.

All of Respondent's seafaring employees are regularly present in the State of Texas. At all times throughout the administration of the Agreement many of these employees are physically within the State of Texas either on board tankers or on vacation/paid leave or on shore leave. Ten to 20 percent of the work time of these employees is spent within the State of Texas.[21]

On the basis of these undisputed facts, Texas clearly has a sufficient interest in the employment relationship between

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[21] While job situs is a factor in determining whether a state has a sufficient interest in the employment relationship under Section 14(b), it is not, as suggested by Petitioners and the Solicitor General, the only test. Further, as shown below at pp. 29-31 *infra*, if the Solicitor General's formulation of the job situs test is accepted, Texas law applies because he has misstated the facts of this case.

Respondent and its seafaring employees to apply the Texas right-to-work law. Indeed, it is not contended in this Court, nor was it contended in the courts below, that any state other than Texas has an interest in this employment relationship sufficient to justify application of its law to this employment relationship. In fact, as acknowledged by Petitioners, the very Agreement which governs this employment relationship is administered within the State of Texas on a daily, recurring basis. And, without doubt the agency shop clause as a part of such Agreement would also be *administered and applied in Texas* if an employee of Respondent were to be discharged for refusal to pay the union dues in lieu of membership.[22]

II. Exclusive reliance on job situs as proposed by Petitioners and the Solicitor General would result in the judicial creation of an exception to Section 14(b) and is not supported by any relevant authority.

The majority of the 3 judge panel of the court of appeals, and the dissenters on rehearing *en banc*, determined that "* * * the job situs of the employees is the most important and logical factor" (Pet. App. B, p. 12b). Petitioners and the Solicitor General urge in this Court that job situs is the only relevant factor. Thus Petitioners argue that "* * * the location where the work is done controls" (Pet. Br. p. 12). Similarly, the Solicitor General asserts that "[a] state has a sufficient interest in the employment relationship only if the employee performs some work within the state" (Sol. Gen. Br. 15).

While job situs is a factor in the determination of the sufficiency of any Texas interest in this employment relationship, it cannot alone be controlling. To make it conclusive

[22] For instance, a discharge for non-payment of union dues would have to be ordered and actually carried out by Respondent at its headquarters in Texas, thus requiring the fleet manager to violate the law of the state where Mobil Oil Corporation has qualified to do business.

would result in judicial usurpation of the function of Congress. Moreover, adoption of such a test is not supported by any relevant authority.[23]

A. Adoption of the job situs test would result in judicial creation of an exception to Section 14(b).

Sections 8(a) (3) and 14(b), like the rest of the Act, contain no specific exemption for the maritime industry. The job situs test proposed by Petitioners and the Solicitor General would, however, result in the creation of such an exception and would give preferred status to the compulsory unionism scheme allowed by Section 8(a) (3) to the complete exclusion of any state right-to-work law allowed by Section 14(b). Nothing in Section 14(b) indicates that it was not to be applied to seafaring employees. When Congress intended to prevent the application of state right-to-work laws, it did so by explicit statutory language as evidenced by its treatment of railway and airline employees covered by

[23] Indeed, there is authority pointing in the opposite direction. The Interstate Maritime Reciprocal Arrangement, adopted by some 24 states (including Texas and New York) so as to integrate the coverage of unemployment insurance laws of the various states with respect to seafaring personnel, recognizes the ephemeral nature of the "job situs" of seamen. See CCH Unemp. Ins. Reports ¶ 1334 (1971). This Arrangement employs an approach whereby "[t]he jurisdiction of coverage in regard to maritime services rendered on a vessel * * * shall be that participating jurisdiction in which the employing unit maintains the operating office from which the operations of the vessel are *ordinarily and regularly supervised, managed, and controlled*" (emphasis added). In this case, it is unquestioned that the operations of Respondent's tankers are supervised, managed and controlled from its headquarters in Beaumont, Texas. As a result, under the Interstate Maritime Reciprocal Arrangement (regardless of so-called "job situs") all of the services rendered by Respondent's seamen are "deemed performed entirely within the jurisdiction of coverage" — that is, the State of Texas.

the Railway Labor Act.[24] Similarly, when Congress desired to exempt a specific industry from the operation of certain provisions of the Act, it did so expressly for the construction industry and the apparel and clothing industries.[25]

Contrary to the suggestion of Petitioners, judicial creation of an exception to Section 14(b) is not required by "the sovereign law making power [of] the United States" over the high seas (Pet. Br. 36). Even the Solicitor General does not agree with that concept and departs from alignment with Petitioners. As the Solicitor General correctly states:

> [T]he fact that seamen usually are governed by uniform and federal maritime law is not an argument against the application of state right-to-work laws to the maritime industry. We do not agree with the dissenting judges (Pet. App. 25a-27a) that all maritime employment is outside the scope of state power. * * * Section 14(b) expressly permits diversity of regulation concerning union security and contains no exemption for maritime workers in general * * *; nor would maritime commerce necessarily be disrupted or hindered by the application to different ships or employers of different union security rules. (Sol. Gen. Br. 14 n. 7; citations omitted.)

[24] See Section 2, Eleventh, 45 U.S.C. § 152(11)(1970), of the Railway Labor Act, which provides:

> Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted —
>
> (a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is later, all employees shall become members of the labor organization representing their craft or class.

[25] See Section 8(e), 29 U.S.C. § 158(e) of the Act, which provides that except in certain instances involving the construction industry and the apparel and clothing industries, it is an unfair labor practice for any labor organization and any employer to enter into so-called hot cargo contracts or agreements whereby the employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person.

While the historical discussion in Petitioners' brief as to the preferred status of seamen is interesting, it is irrelevant in this context. The Form of Articles of Agreement for seamen, as prescribed by federal law, provides that "'* * * any other stipulations may be inserted to which the parties agree, and which are not contrary to law." Table A in Schedule following 46 U.S.C. § 713 (1970). Federal maritime law and usage go only a negligible distance in bestowing benefits on Respondent's employees compared to what has been obtained for them by their union representatives, Petitioners herein. Therefore, the employment terms and conditions of Respondent's seamen employees are contained in, and controlled by, the Agreement. This Agreement is a typical creature of Taft-Hartley, containing fifty printed pages comprised of 128 separately numbered paragraphs (Pl. Ex. 1, A. 279-329). The topics covered by this Agreement were hammered out at the bargaining table under the Taft-Hartley Act, and not under admiralty law. Of these 128 topics, a few examples are: discipline (A. 291), working hours (A. 306), seniority (A. 289), meal hours (A. 294), lockers (A. 293), bedding (A. 293), wages (A. 310), overtime rate (A. 312), drills (A. 314), tank and bilge cleaning (A. 316), illness (A. 321), holiday meals (A. 322), port overtime (A. 324), and scheduling of vacation-paid leave (A. 327). Paragraph 3 of this Agreement contains the union dues checkoff authorization letter addressed to Respondent at its Beaumont headquarters (A. 282-83), and paragraph 13 contains the grievance procedure which culminates at step 5 with presentation of a written complaint to Respondent's office in Beaumont (A. 286-87).

Thus, the wages, hours and working conditions of Respondent's employees are formulated and tightly controlled under a labor agreement that has been collectively bargained pursuant to the requirements of the Act. These lucrative benefits were obtained for the employees by the Petitioners which acted to take full advantage of all Taft-Hartley rights

afforded to these employees. Even the Petitioners' own status as bargaining representative for these employees is found on an NLRB certification issued under the Act. Yet now it is claimed that this Act does not apply in full measure to seamen, or to unions that represent seamen. Such result is illogical; it would confer all conceivable Taft-Hartley benefits on the seamen and their union while insulating them from the corresponding limitations and qualifications that attach to everybody else.

Moreover, the law applicable to maritime industry collective bargaining agreements negotiated under the Act is no different from that which is applied to agreements covering other employees. As the court stated recently in *Cady v. Twin Rivers Towing Co.*, 486 F.2d 1335, 1339 (3d Cir. 1973):

> We are not aware of any cases to support the proposition that seamen suing under collective bargaining agreements are accorded special rights. On the contrary, principles developed under Section 301(a) [of the Taft-Hartley Act] have been held to apply to seamen in ways no different from other workers.

Accord: *Suissa v. American Export Lines, Inc.*, 507 F. 2d 1343 (2d Cir. 1974).[26] Further, despite Petitioners' statement that "Congress has developed a vast, all-pervasive and detailed body of statutory law regulating the employer-employee relationship of blue water seamen" (Pet. Br. 33-34), as a practical matter the importance of many of these statutory protections has greatly diminished. For example, the small

[26] In its decision in *U.S. Bulk Carriers v. Arguelles*, 400 U.S. 351 (1971), this Court recognized that seamen are accorded no special rights under collective bargaining agreements and that principles of interpretation, such as the requirement of exhaustion of contractual grievance procedures, *see, e.g. Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), developed under Section 301 of the Act, 29 U.S.C. § 185 (1970), are ordinarily to be applied. Only a narrow exception was carved out for cases in which Congress had created a concurrent statutory remedy. Cf. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), where this Court held that resort to arbitration under a non-discrimination clause of a collective bargaining agreement did not foreclose the grievant from asserting his rights under the concurrent statutory scheme of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1970 ed. Supp. II).

sum of $8.00 per day is normally the amount which a seaman is entitled to receive as maintenance and cure on account of disability due to injury or illness incurred in the service of a vessel. However, pursuant to noncontributory sickness and accident plans maintained by many employers in the maritime industry under collectively bargained labor agreements, seamen are enabled to receive daily disability payments which far exceed the small amounts available as maintenance and cure. *Thomas v. Humble Oil & Refining Co.*, 292 F. Supp. 260 (E.D. Va. 1968), aff'd 420 F. 2d 793 (4th Cir. 1970); *Haughton v. Blackships, Inc.*, 462 F. 2d 788 (5th Cir. 1972). Furthermore, despite the presence of certain federal statutes regulating the payment of wages to seamen [see, e.g., 46 U.S.C. §§ 591 et seq. (1970)], not only the amount but also the method and frequency of wage payment to Respondent's seafaring personnel is established in largest part by the terms of the Agreement between Petitioners and Respondent (Pl. Ex. 1, A. 279, 308-312, 326-328), all of which is fully explained to each seamen in clear and easily understandable language upon employment with Respondent (Pl. Ex. 4, A. 242, 248-250).[27]

Accordingly, there is absolutely no basis for Petitioners' argument that the nature of admiralty jurisdiction requires that a special exception be carved out from the rule embodied by Congress in Section 14(b).[28]

[27] Although Petitioners have spoken in general terms as to the presupposed exalted status of seamen under federal law, it must be recalled that Respondent's operations are dissimilar to those of other employers in the maritime industry. In most instances a maritime employee will ship out of many different hiring halls and sail aboard the vessels of many different companies. See *NLRB v. Seafarers International Union*, 496 F. 2d 1363 (5th Cir. 1974). However, Respondent's personnel are not employed through hiring halls. Instead, as recognized in the Agreement between Respondent and Petitioners, Respondent employs a permanent workforce of seamen who are encouraged to remain in the continuous hire of Respondent until retirement age (Pl. Ex. 1, A. 279, 289). This absence of comparability of Respondent's operations to those of other employers also underscores the limited potential for application of the decision of the *en banc* court to other employment relationships.

[28] The authorities relied upon by Petitioners to establish that seamen are exempt from the application of state law under Section 14(b) are inapposite. *Union Fish Co. v. Erickson*, 248 U.S.

Petitioners also argue that in failing to adopt a right-to-work law applicable to the District of Columbia, Congress has indicated its intention that Section 8(a)(3) is to constitute the only limitation on union security agreements in all geographic areas over which Congress has primary legislative authority. This argument is likewise unpersuasive. This Court has held that Congress sits as a state legislature with regard to the District of Columbia and "* * * may * * * exercise all the police regulatory powers which a state legislature * * * would have in legislating for state or local purposes." *Palmore v. United States*, 411 U.S. 389, 397 (1973). In such role as a "state" legislature, Congress simply has chosen not to enact a right-to-work law for the District of Columbia. Hence, the failure of Congress to do so in no way indicates that the maritime industry is to be exempted from Section 14(b).

B. Exclusive use of the job situs test is not supported by the relevant authorities.

Both Petitioners and the Solicitor General have placed substantial reliance on 3 decisions of the NLRB rendered shortly after the enactment of Section 14(b).[29] The relevance of these cases is open to question. "The issue * * * was not whether some state law applied to the employment relationship but *which* state law applied, thus aborting the question with which we are now faced." (Pet. App. A, p. 5 n. 5; emphasis in original). A close examination of these decisions reveals that they do not support the job situs test proposed.

308 (1919), and *Kossick v. United Fruit Co.*, 365 U.S. 731 (1961), unlike this case, did not involve an express authorization of the application of state law by Congress, and did not even involve the Taft-Hartley Act. Furthermore, *Union Fish* was decided some 16 years prior to enactment of the National Labor Relations Act, while *Kossick* was concerned only with the validity of an oral agreement unregulated by federal statute and did not involve a union or a collectively bargained labor agreement. Moreover, substantial disuniformity would have resulted from the application of state law in those cases.

[29] *Giant Food Shopping Center, Inc.*, 77 NLRB 791 (1948); *Northland Greyhound Lines, Inc.*, 80 NLRB 288 (1948); *Western Electric Co.*, 84 NLRB 1019 (1949).

Indeed, they support reference to the entire employment relationship in determining whether state law is applicable under Section 14(b).

In those decisions, the NLRB dealt with the scope of the units in which elections were to be held under since repealed Section 9(e) of the Act,[30] 65 Stat. 601, 29 U.S.C. § 159(e) (1947), to determine whether employees desired to be covered by union security clauses. In the first case, *Giant Food Shopping Center, Inc.*, 77 NLRB 791 (1948), the NLRB affirmed its Regional Director's determination that in light of Section 14(b), such a unit could not properly include both employees employed in a right-to-work state and employees in a non-right-to-work state. However, the NLRB did not discuss at all the factors that might be considered in determining which state laws applied.

In *Northland Greyhound Lines, Inc.*, 80 NLRB 288 (1948), the employees involved included bus drivers and other employees who continually traveled between various states with right-to-work laws and states without such laws. In determining which employees were covered by right-to-work legislation under Section 14(b), the NLRB stated:

> In resolving the question as to the applicable State law, such factors as the residences of the employees, the places where they were hired, their headquarters, the proportions of working time spent in the various States, and (with regard to the drivers), their routes, have been given consideration. In view of all the circumstances involved, we are persuaded that the headquarters of the employees provide the best criteria because they represent *the focal points of the employment relationship.* The headquarters are where the employees report to work, receive their instructions, and are paid their salaries. It is, therefore, in the States in which they have their headquarters that the provisions of any agreement

[30] Former Section 9(e) of the Act, which was repealed in 1951, established procedures for the holding of elections among bargaining unit employees to authorize the execution or rescission of agreements requiring membership in labor organizations as a condition of employment.

> between a union and an employer regarding the employees involved will be effectuated. In view of the fact that most of the essential matters with respect to the employment relationship will be dealt with in the States where the employees have their headquarters, we believe that application of this test to determine which State law shall control will result in the least amount of extra-territorial effect being given to the laws of one State as against those of another. (citations omitted, emphasis added).

Thus the NLRB did not concentrate on job situs; rather, it looked to "the focal points of the entire employment relationship".

In the third case relied upon as support for the job situs test, *Western Electric Co.*, 84 NLRB 1019 (1949), the NLRB found, applying the test developed in *Northland Greyhound*, supra, that installation employees who frequently moved from state to state were properly excluded from the Section 9(e) unit if their job site was in a right-to-work state. The NLRB noted that, as with the headquarters in *Northland Greyhound*, the job site was where employees "* * * report for work, receive their instructions, and are paid their wages" (84 NLRB at 1022).

In none of the cases relied upon by Petitioners and the Solicitor General as support for a "job situs" test did the NLRB hold that job situs was determinative under Section 14(b). The NLRB in fact, employed an approach much like that urged by Respondent here — that is, an approach which looks to all aspects of the employment relationship. Only where an examination of various aspects of the employment relationship showed it to be completely focused at the job site was job situs deemed controlling. And on the basis of the uncontroverted record evidence in this proceeding which demonstrates that a substantial number of focal points of the employment relationship between Respondent and its seafaring employees are centered in Texas, the *en banc* court correctly concluded under the NLRB approach that Texas right-to-work law applied to such relationship.

C. Under the job situs test of the Solicitor General, Texas law applies.

The Solicitor General argues that a "State has a sufficient interest in the employment relationship only if the employee performs some work within the State" (Sol. Gen. Br. 15). In his brief the Solicitor further asserts that:

> A union security clause could be "performed" only where the work is done or where the dues are collected and sent to the union. *Here, all of these events take place outside Texas. The work is performed at sea; the dues are deducted from wages paid at sea;* the dues are mailed to the Union in New York. (Sol. Gen. Br. 18; erroneous statements emphasized)

Even accepting a simplistic "place of work and place of pay" test as valid, the Solicitor General has misstated the facts of this case as to both elements. The uncontradicted record evidence in this case demonstrates that (despite the Solicitor General's statement that all work is performed outside of Texas) *Respondent's employees do perform — in the Solicitor General's words — "some" work in the State of Texas.* The district court made specific findings of fact that (1) *all* of Respondent's seafaring employees are "regularly present in the State of Texas inasmuch as [Respondent's] tankers are on voyages beginning or ending at Texas ports in their normal trade" (Finding of Fact No. 18, A. 28), (2) at *all* times some of Respondent's seafaring employees "are in the State of Texas, either on board tankers * * * or on paid vacation * * *" (Finding of Fact No. 19, A. 29), and (3) *all* of Respondent's seafaring employees spend 10% to 20% of their work time in Texas (Finding of Fact No. 18a, A. 36).[31]

[31] Finding of Fact No. 18a reads as follows:

> Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters (A. 36).

The uncontroverted record evidence also shows that all payroll checks are written in and mailed from Texas (A. 65-69; Pet. App. A, p. 3) and that all monthly union dues checkoffs, federal withholding taxes, and federal social security taxes are deducted from those checks in Texas (A. 68, 158-161; Pet. App. D, p. 3). Unemployment compensation premium payments are also made to the State of Texas. Additionally, all cash given Respondent's employees aboard ship is put on board in Texas (Pet. App. D, p. 3). While Respondent's employees receive this cash (totaling in a representative year $1,[illegible]7,000.00) outside Texas, *paychecks* (amounting in that same year to $3,265,000.00) were prepared and mailed in Texas (Pl. Ex. 3, A. 238). Another $1,431,000.00 in federal income and social security taxes was deducted from the unlicensed employees' gross pay in Texas and paid to the federal government in Texas (*id.*). Thus, the Solicitor General has also misstated the facts of this case with regard to payments of wages.

While the Solicitor General has recognized the importance of the place where deduction of union dues is made, the emphasis both he and Petitioners place on job situs is difficult to fathom.[32] An agency shop clause is applied equally on hire, on deduction of union fees and dues from wages paid, and on termination for failure to make the required payments. It is those aspects of the employment relationship with which state policy is concerned, and those aspects should be determinative in assessing the sufficiency of a state's interest in applying its right-to-work law. The uncontroverted record evidence in this case

[32] Equally perplexing is the Solicitor General's suggestion (Sol. Gen. Br. 22) that because Section 14(b) fails to allow states to ban hiring halls, Congress was unconcerned with hiring in enacting Section 14(b). Only nondiscriminatory hiring halls — that is, halls that do not require union membership as a condition to use of the hall by employees or as a condition of hire by employers — are legal under the Act. *See Nassau-Suffolk Chapter of the National Electrical Contractors' Ass'n, Inc.*, 215 NLRB No. 125 (1975); *Teamsters & Truck Drivers Local No. 631*, 213 NLRB No. 91 (1974). Such halls simply do not have the same restrictive effect on the hiring process that Congress was concerned with in Sections 8(a)(3) and 14(b) and thus are not within the scope of those sections. See *Local 357, Teamsters v. NLRB*, 365 U.S. 667 (1961) (remarks of Sen. Taft at 673-74).

shows that all of these events — hiring, payment of wages with deduction of union dues, and discharge — take place entirely in Texas (hiring, dues, and discharge) or predominantly in Texas (payment of wages).

Nonetheless, if the Solicitor General's own test (i.e., a state may apply its right-to-work law only if employees perform "some work" within that state), is applied to the undisputed record evidence in this case, Texas law controls; despite his misapprehension of the record, not only "some" work but indeed a *significant* amount of work is performed in Texas.

III. The test of the court of appeals will not result in extraterritorial application of Texas law, uncertainty or manipulation.

Application of Texas right to work law to the employment relationship between Respondent and its seafaring employees deprives no other state of its sovereign prerogative to apply its own law if it has a sufficient interest, that is, a predominant interest, in doing so.[33] Such a case is not now before this Court. No other contestant state has appeared, or indeed could appear under the facts of *this* particular employment relationship. The very term "extraterritoriality" is a misnomer under the unique blending of federal law in Section 14(b) and state right-to-work law. Federal law has prevailed, not state law, when it is considered that the trial court judgment expunging the agency shop clause from the Agreement was clearly an effectuation of national labor policy which has incorporated, adopted and thereby become as one with state policy in the right-to-work states.

[33] Despite the Solicitor General's professed concern (Sol. Gen. Br. 17) that application of Texas right-to-work law to this employment relationship gives extraterritorial effect to Texas law, he does nevertheless concede that crews of tugboats and ships on intrastate waterways in Texas would remain covered by Texas law even if their employment took them to other states (Sol. Gen. Br. 13-14). Moreover, the method of analysis chosen by the *en banc* court to look to the whole of the employment relationship is neutral for it does not prefer the law of any state. Rather, the law of the state with a sufficient interest in the employment relationship will be applied — regardless of whether it is one with or without a right-to-work law.

Looking to the entire employment relationship will not, in the ordinary case, produce uncertainty concerning which state's law is to be applied. Except in the rare case, there will be little doubt about which state is at the center of the employment relationship. And in those cases where some doubt exists, it is not reduced by use of the job situs test advocated by Petitioners and the Solicitor General. Under the job situs test, there would, for example, be no certain result where employees are hired in one state, work in a second state, and union dues are deducted from checks made out and mailed from a third state. Moreover, contrary to the implications of Petitioners and the Solicitor General, the court of appeals did not hold that some state's law must always be applicable to an employment relationship. In a case like that posited above, if other aspects of the employment relationship were similarly dispersed, it might be concluded by a court that no state had an interest in the employment relationship sufficient to justify application of its law.

Finally, the suggestion that the approach of the *en banc* court will be subject to manipulation does not withstand even cursory scrutiny. The court of appeals *en banc* noted that Petitioners have never alleged that Respondent moved to Texas on account of the Texas right-to-work law (Pet. App. A, p. 17). A union security clause involves no cost to the employer; the costs, in the form of union fees and dues, are borne by his employees. Moreover, it strains credulity to suggest that the existence of a state's right to work law would be the determining factor in the face of such weighty considerations as, for example, local taxes, availability of work force, source of raw materials, logistics, central control of operations, and distance from relevant markets. Furthermore, were an employer to relocate in order to escape an incumbent union or a union that has requested recognition, it would have committed an unfair labor practice subject to NLRB sanctions.[34] In light of these factors, the contention that the test developed by the *en banc* court and advocated by Respondent would lend itself to employer manipulation, plainly lacks merit.

[34] See, e.g. *Royal Norton Mfg. Co.*, 189 NLRB No. 71 (1971).

CONCLUSION

Both the language of Section 14(b) and the relevant legislative history mandate that the sufficiency of a state's interest in applying its law be determined by looking to the whole employment relationship. On the undisputed facts of this case and even under the test proposed by the Solicitor General, Texas clearly has a sufficient interest in applying its right-to-work law to this employment relationship.

Weighing the whole employment relationship will not result in uncertainty, manipulation or an unwarranted extra-territorial application of state law. Such a comprehensive test is fair, neutral and logical. In contrast, judging the sufficiency of a state's interest in applying its right-to-work law solely by job situs would result in judicial legislation of an exception to Section 14(b). Further, looking solely to job situs is without support in the authorities.

Accordingly, the trial court judgment and court of appeals *en banc* judgment are correct and should be affirmed.

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No. 74-1254

Supreme Court of the United States

OCTOBER TERM, 1975

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO and MARITIME LOCAL UNION No. 8-801, *Petitioners,*

v.

MOBIL OIL CORPORATION, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

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REPLY BRIEF FOR PETITIONERS

At the outset of its argument, Respondent Mobil Oil Corporation acknowledges that in enacting §14(b) "Congress intended that each State [and Territory] develop its own [union security] policy," and that union security provisions regulate a facet of the "employment relationship". (Resp. Br., p. 14; Compare Pet. Br., pp. 19-20.) The Company's starting points serve to delimit the dispute between the parties. From recognition that §14(b) states a policy of neutrality with regard to the validity of union security provisions, it follows that each jurisdiction's law is restricted

to employment relationships centered there. (Cf. Resp. Br., p. 16.) To permit one jurisdiction to reach out and regulate an employment relationship centered in another jurisdiction with a contrary union security policy would undermine the equal status Congress conferred on each law-giving authority. Thus, the first issue in controversy here is what are the factors which determine the site of the employment relationship.

1. The language of § 14(b) clearly dictates the conclusion that the factor that determines the site of the employment relationship is the location at which the employees covered by the agreement perform all or substantially all of their work. For the provision states:

> "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization *as a condition of employment in any State or Territory* in which such execution or application is prohibited by State or Territorial law."

The ordinary meaning of this language is surely that an individual is "employed in" the jurisdiction in which he performs his work. Thus, where an employment relationship touches more than one jurisdiction, the governing law on union security is that of the jurisdiction in which the employees perform their work.

This reading of § 14(b) gives effect to all the words in the provision. For, as we explained in our opening brief (Pet. Br., p. 25), the permission granted by §14(b) to the states and territories to prohibit both "execution or application" allows the jurisdiction in which the work is performed to prohibit execution independently of application, and thereby provides a vehicle for invalidating a union security agreement

covering work in the State in advance of any discharge based upon it.[1]

The Company responds by ignoring the phrase "as a condition of employment in any State or Territory," interpreting the statute as if it read: "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment [if] such execution or application is prohibited by State or Territorial law". Thus, in its discussion of the language and legislative history of § 14(b), Mobil abandons the rationale under which the majority below sustained the Company's position—that the union security law of the jurisdiction in which an employee is hired ordinarily governs[2]—in favor of the argument that "Congress specified that the law of the State where such agreements are to be executed or applied * * * will control." (Resp. Br., p. 16.) On the basis of this interpretation, the Company argues that since § 14(b) permits the states to proscribe either the "execution or application" of union security agreements, any state in which an agreement is "applied" in the sense that some action is taken by the employer pursuant to the agreement has a "sufficient interest" in vindicating its union

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[1] We note that the legislative history to which the Company refers (Resp. Br., p.15, n.18) gives no indication that Congress intended to permit a State to bar execution of a union security agreement if the agreement was not "to be performed" in that State, and that there is no suggestion in the legislative history of an intent, by altering the final language, to expand the authority of right-to-work States. (See H.Conf.Rep. No. 510, 80th Cong., 1st Sess., p. 60.)

[2] Indeed, the lesson the Company draws from the legislative history—"Congress thus evidenced its concern with the continued impact of union security clauses on employees *subsequent* to hire" (Resp. Br. p. 18; emphasis supplied)—is directly contrary to that of the majority below.

security policy to justify determining the validity of that agreement under its law. This would be the result, apparently, even when the agreement had been executed elsewhere, and even if all the covered employees' work was performed elsewhere.

The logical absurdity of this reading of § 14(b) is easily demonstrated. Here, the agreement was for all practical purposes executed in New York. (Pet. Br., p. 6; Resp. Br., pp. 7-8.) While we vigorously dispute the pertinence of most of the factors the Company claims show the agreement to be applied predominantly in Texas (pp. 5-7, *infra*), this case does illustrate that it is quite possible for an agreement to be executed in a union security state and applied in whole or in part in a right-to-work state. Under the Company's reading of the statute, either each of these states would have a statutorily protected right to vindicate its union security policy, even though it is impossible for the agreement to be at once valid and invalid, or the state with the right-to-work law would always prevail, even though this would violate the neutrality principle from which Mobil itself begins.[3]

In contrast, as explained in our opening brief (at pp. 24-25), it is the rare case in which the covered employees' work situs is so fractionated as to create a situation in which there is a substantial argument as to

[3] To mask this dilemma, the Company resorts to internally inconsistent statements. Thus, in full, its summation of its position (quoted in part above) is: "Congress specified that the law of the State where such agreements are to be executed or applied—that is, where the employment relationship is centered—will control." (Resp. Br., p. 16.) Obviously, the employment relationship cannot be "centered" in two different places, while execution and application can, as in this case, easily take place in two or more jurisdictions.

which jurisdiction's law applies. Normally, then, the work situs test clearly designates the governing jurisdiction, and does so in a neutral manner.

Thus, both the language and logic of § 14(b) suggest that the provision was written as it was precisely to focus the inquiry on the real center of the employment relationship—the place where the work is ordinarily done. And, despite the Company's protestations to the contrary (Resp. Br., pp. 26-28), the NLRB, the expert agency charged with the administration of the Act, has adopted the job situs test. For, the Board has relied on that location, falling back, only where it is impossible to fix that location, on the place where the "*employees* have *their* headquarters" (where they "report to work, receive their instructions and are paid their salaries"). [See Resp. Br., pp. 27-28, citing *Northland Greyhound Lines, Inc.*, 80 NLRB 288, 291 (1948)]. The Board has never sanctioned applying the law of the state where the *employer* has his headquarters. (See Pet. Br., pp. 26-28.)

2. Having, in our view, entirely misconceived the factor that justifies application of a state's right-to-work law, the Company then relies, in applying its test, on a series of supposed connections with Texas which, it proclaims, constitute "*all* the crucial aspects of [this] employment relationship". (Resp. Br., p. 19.) Yet, a review of the contacts with Texas reveals that almost all deal not with the employment *relationship*—that is, with the factors which describe how the employer and employees relate to each other or interact—but with unilateral actions of the employer and its supervisory employees.

For example, Respondent apparently sees some pertinence to the residence of the office staff of its Beau-

mont Gulf-East Coast Operations.[4] While it is at least possible, although we believe ultimately incorrect (Pet. Br., p. 20), that the residence of the employees actually *covered* by a union security agreement could have some relevance to its validity, it is inconceivable that the residence of employees of the employer who are *not* covered by the agreement can bear upon the agreement's legality. Similarly, we fail to see the pertinence, under any view of § 14(b), of where the employer has "datelined, written, edited, printed, published [or] mailed" its employee newspapers (Resp. Br., p. 7), puts money upon its tankers, mails paychecks, calculates union dues, mails union dues, or ultimately approves hiring and firing decisions made elsewhere (Resp. Br., p. 19). All of these actions are taken in Beaumont but are completed outside of Texas. For example, the effect on the covered employees of putting money on a tanker is felt when wages are paid on ship in a northern port. The Company's actions with regard to union dues is of financial consequence to the union only on receipt of the check in New York.

Further, as these illustrations show, Mobil has not only emphasized irrelevant contacts, but it has, in order to appear to have many contacts in Texas, fractionated into its details the one basic contact with Texas—that one of the employer's offices, which seems primarily to perform paperwork with regard to these employees, is in Beaumont. Clearly, since the Union

[4] The Company fails to mention that Gulf-East Coast also has two other offices, in New York and New Jersey, each with several office employees (App. 60, 74-75). Moreover, while the Company accuses us of "a deliberate effort to obscure the Texas seat of Respondent's operations" (Resp. Br., p. 3) by denominating the respondent in this case as "Mobile Oil Corporation", it is clear that Mobil Oil Corporation, and not an "operating unit" thereof, is the entity qualified to do business in Texas. (App. 6; Resp. Br., p. 20, n. 22.)

has a New York office, and since the Union is an equal party to the agreement and involved in its administration, Petitioner could have focused on similar details with regard to its New York office—for example, publishing the union newspaper, receiving union dues and negotiating and executing collective agreements with the Company. But such trivializing of "contacts", and such emphasis upon unilateral activities, does not illuminate the inquiry we see as central, viz., where is the *relationship* between the employees who are affected by the union security clause and the employer centered.

Moreover, even if the Company's asserted contacts were relevant to the present issue, these contacts hardly cover "all the crucial aspects of [this] employment relationship".[5] For the *most* critical aspect of that relationship, controlling in our opinion if it is readily determinable, is where the employees work and are supervised in their daily tasks; this factor is left out of the Company's calculus entirely. Aside from the discussion above indicating that the language and logic of § 14(b), as well as NLRB decisions, dictate that the place of work is paramount, it is evident that these parties themselves have considered their relationship to center upon the work aboard ship. For, as the Company's discussion of the collective bargaining agreement illustrates (Resp. Br., p. 23), almost all of the matters covered by that agreement relate to mat-

[5] Nor is it true that "it is not contended in this Court, nor was it contended in the courts below, that any state other than Texas has an interest in this employment relationship sufficient to justify application of its law to this employment relationship." (Resp. Br., p. 20.) We have continually maintained that even if our job situs test is rejected, on the Company's own theory at least some of these employees' employment relationship is centered in New York, and New York law must apply as to them. (Pet. Br., p. 39, n.12; see also U.S. Br., pp. 14-15; Pet. App. 30a, n.21.)

ters concerning these employees while aboard ship—discipline, working hours, meal hours, lockers, bedding, illness, work duties, etc. And, the collectively bargained agreement is surely the best embodiment of the parameters of the relationship between these parties.

Finally, the Company asserts that it "strains credulity to suggest" that its approach, with its focus on the *employer's* headquarters, could induce employers to locate their headquarters in right to work states. (Resp. Br., p. 32.) But the very fact that the Company instituted this declaratory action to invalidate an agency shop clause, when such a clause had never been declared invalid by any Texas court, when no employee was ever discharged because of the clause, and when, so far as the record shows, neither any employee nor any state official had ever questioned the clause's validity, surely suggests that this Company's interest in not operating under a union security agreement is great. Further, employers have historically led the fight to make union security clauses invalid, because union security is often the precondition for unions strong enough to limit management prerogatives. [See, e.g., Hearings before the Senate Committee on Labor and Public Welfare, 80th Cong., 2d Sess. (1947), pp. 393-394, 459, 534, 942 (Testimony on behalf of General Motors, United States Chamber of Commerce, and National Association of Manufacturers.)] Thus, employers generally, and this employer particularly, at least believe that union security clauses entail a significant cost to them, financial and otherwise. And since, under the Company's approach, the law of the state in which an employer's administrative headquarters is located would prevail even if *no* work is done there, it is not at all difficult, given modern communications, to imagine that employers would choose to place their administrative offices *away* from the "work force,

source of raw materials [and] relevant markets" (Resp. Br., p. 32), to escape union security clauses. While this does not appear to have been the case here, it would obviously be very difficult to prove an employer's motive in such a situation.

3. The Company maintains that "[a]doption of the situs test would result in judicial creation of an exception to Section 14(b)." (Resp. Br., p. 21.) The premise for this assertion is that the test would put seafaring employees beyond the reach of any jurisdiction as far as § 14(b) is concerned

Whatever may be the case with regard to other maritime employees, seamen who spend almost all of their working time on American flag ships plying the high seas, and not within the borders of any state are, like employees in the District of Columbia, working in a federal jurisdiction. (Pet. Br., pp. 28-38.) Since there *is* a law making authority, the federal government, with plenary and exclusive power to determine what union security policy should govern on the high seas, no exception to §14(b) is created by adoption of the job situs test.[6]

The Company perceives a conflict between our position and that of the Solicitor General in this regard. (Resp. Br., p. 22.) However, the Solicitor General's argument is directed at denying the propositions that "all maritime employment is outside the scope of State Power" and that "Section 14(b) * * * contains [an] exemption for maritime workers in general." (U.S.

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[6] The Company suggests that we are somehow arguing for a general exemption for maritime employees from the NLRA (Resp. Br., pp. 24-25). We do not believe that our opening brief can fairly be so read. To make assurances doubly sure, however, we specifically disavow any such intent, and state that the NLRA *does* apply generally to seamen who work on American flag vessels on the high seas.

Br., p. 14, n. 7.) As just noted, our argument is limited to the proposition that American flag vessels on the high seas are within an exclusively federal jurisdiction. Thus, our position does not purport to answer the question, which we regard as unsettled under this Court's precedents, of the extent of the states' authority concerning areas *within* their borders that are also within the federal admiralty jurisdiction, and acceptance of our view would not determine the extent to which a state right-to-work law would govern such maritime workers as "tugboat crews and crews of ships upon intrastate waterways". (Cf. U.S. Br., pp. 13-14.) [7]

Respondent seeks also to deprecate the two cases we regard as conclusive on the lack of authority of states to regulate the validity of an employment contract to be performed on the high seas, basically by noting that neither involved a collectively bargained labor agreement. (Resp. Br., p. 26.) We fail to see any conceivable relevance to this fact. It is a fundamental premise of the federal labor law that a collectively bargained agreement constitutes the sole and exclusive contract of employment between the members of a bargaining representative and the employer. (*J. I. Case Co.* v. *Labor Board,* 321 U.S. 332, 338-339.) The scope of the federal maritime jurisdiction as developed with regard to individual contracts between seamen working on the high seas and their employers must perforce apply to the interpretation and validity of collective bargaining agreements which are their equivalent.

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[7] While we have no basic problem with the Solicitor General's theory that there may be situations in which *no* jurisdiction has a sufficient interest in a given employment relationship to displace the federal rule embodied in § 8(a)(3), we do not believe there is any reason to address the viability of this theory in this case. For, here there *is* a legislative authority with a sufficient interest, under the job situs test, to assert its own union security policy.

CONCLUSION

For the reasons stated above, and in the Petitioners' opening Brief, the judgment of the Court of Appeals should be reversed.

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No. 74-1254

In the Supreme Court of the United States

OCTOBER TERM, 1975

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., PETITIONERS

v.

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., PETITIONERS

v.

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

On May 27, 1975, the Court invited the Solicitor General to express the views of the United States in this case. In response the United States filed a memorandum expressing the view that the petition should be granted, limited to the first question presented. Certiorari was granted without limitation on October 6, 1975. This brief elaborates upon the views expressed in our memorandum.

STATEMENT

Mobil Oil Corporation is a New York corporation, and its top corporate offices are in New York City (App. 129–130). The Gulf-East Coast Operations Division of Mobil's Marine Transportation Department, which operates eight oceangoing American flag tankers, has its offices in Beaumont, Texas (App. 54–55). The tankers, which transport petroleum products, typically move from Texas to Atlantic coast ports, making several round trips per month. On any one voyage a ship is at sea for approximately four days and spends approximately 18 hours in port to load or unload (App. 117–119). Some of the tankers also move in foreign commerce on voyages lasting as long as six months (App. 120–121).

The 289 unlicensed seamen who work on the tankers are represented for collective bargaining purposes by Maritime Local 8–801 of the Oil, Chemical and Atomic Workers International Union (Pet. App. 1d, 2d). Sixty percent of the seamen seek employment at Mobil's Texas office and 40 percent seek employment at its New York office (App. 75–76).[1] The final hiring decision occurs in Texas, but this decision is only a formality for seamen applying in New York. The Texas office sets manpower requirements and keeps personnel records, but the New York office chooses the particular seamen (App. 74–76).

[1] 123 employees list Texas as their residence, 60 New York, 21 New Jersey, 16 Florida, 13 Louisiana, 10 Maine, and 10 Rhode Island; the listed residences of the remainder are scattered in 16 other States (App. 63–64).

Some of the seamen ship out of Atlantic ports, while others ship out of Gulf ports.[2] Personnel and payroll records are maintained by the Beaumont office (App. 65). Union dues checkoffs from those employees who have authorized them are made in Beaumont and mailed to the Union in New York (App. 158–161). Texas administers unemployment compensation on behalf of all the seamen (App. 93). Seamen's claims for maintenance and cure, health, accident, and other such benefits are handled in New York (App. 68–69).

The seamen perform all of their work aboard ship; they work for 85 days and then have 37 days of paid shore leave (App. 174, 180–181). The seamen are paid, in cash, on board the ship; they are paid every other trip, usually in a nothern port (App. 65, 67, 124–125).[3] The first four steps of the contract grievance procedure take place on board ship. The next step takes place in Beaumont; arbitration, should it be necessary, takes place in New York (App. 138–140).

In 1969, Mobil and the Union negotiated in New York a collective bargaining agreement covering the seamen who work on Mobil's tankers (Pet. App. 2d).

[2] The seamen designate home ports for purposes of computing transportation reimbursement for traveling between the port where they board or leave the ship and their residences. The home port is not necessarily the port where they actually board or leave the ship. 152 designate Beaumont as home port; 107 New York City, and 30 Providence, Rhode Island (App. 62, 64, 126–128; Pet. App. 3d).

[3] However, a seaman can request that a check be sent to his bank or his wife. In such event, the master will send a request to Mobil's payroll office in Dallas (App. 65).

The agreement contained an agency shop clause, which required all employees to become "members of the union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date" (Pet. 6).

Mobil brought this suit under Section 301 of the Labor Management Relations Act, 61 Stat. 156, 29 U.S.C. 185, seeking a declaratory judgment that the agency shop clause violated the Texas right-to-work laws (Pet. App. 2c). The district court, finding that the seamen's Texas contacts outweighed those with any other State, held that the Texas right-to-work laws applied to the agreement and that the agency shop clause was consequently invalid (Pet. App. D).

A divided panel of the court of appeals reversed (Pet. App. B; 483 F. 2d 603). Drawing on *Western Electric Co.*, 84 NLRB 1019, and *Northland Greyhound Lines, Inc.*, 80 NLRB 288, the panel held that "the situs of the work performance of the covered employees" (Pet. App. 9b, 11b) was more important than the seamen's contacts with either New York or Texas, so that the "employees involved here are not for the purpose of their collective bargaining agreement employees of Texas or any other state—they are mobile, maritime employees, whose principal place of employment, or jobsite, is on the high seas" (Pet. App. 12b–13b).

The Fifth Circuit sitting *en banc* vacated the panel's judgment and, over six dissents, affirmed the judgment of the district court (Pet. App. A; 504 F. 2d 272). It held that "the federal labor legislation, the

predominance of Texas contacts over any other jurisdiction, and the significant interest which Texas has in applying its right to work law to this employment relationship warrant application of the Texas law and, consequently, invalidation of the agency shop provision" (Pet. App. 7a–8a). It rejected the panel's job situs approach because (Pet. App. 12a–13a), "if the congressional discussion on compulsory unionism could be said to have any single reference point, it is not job situs but the hiring process. And in our judgment, the language of section 14(b) which looks to the 'execution or application' of agreements requiring membership as a condition of employment refutes the notion that Congress was suddenly singularly concerned with the job situs of the employees rather than with the effects of such an agreement on men and women seeking employment in a mobile society."

The six dissenting judges pointed out that the majority's decision "give[s] extraterritorial effect to Texas' right-to-work laws" and adhered to the panel's view that maritime employment, "regulated in virtually all aspects by federal maritime law," should not be governed by state labor laws "when none of the employees work in the state" (Pet. App. 31a). Chief Judge Brown, in a dissent joined only by Judge Dyer, also argued (Pet. App. 34a) that "it would be better administration and more consistent with sound legal principles for the Court to refer this case to the NLRB under the doctrine of primary jurisdiction."

598-143—75——2

ARGUMENT

I. State Right-To-Work Laws May Not Be Applied to Seamen Who Work on the High Seas

A. Introduction and Summary

The first proviso to Section 8(a)(3) of the National Labor Relations Act (NLRA), as amended (61 Stat. 140, 65 Stat. 601, 73 Stat. 525, 29 U.S.C. 158(a)(3)), makes lawful under that Act union security agreements that require union membership commencing 30 days after inception of employment. However, Section 14(b) of the Act, with obvious reference to Section 8(a)(3), declares that "Nothing in this Act" authorizes "the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." Section 14(b) thus permits a State, if it desires, to enact a more comprehensive ban on union security arrangements than does the proviso to Section 8(a)(3), which bars only the closed shop. This Court has held that agency shop provisions, which are privileged under Section 8(a)(3) (*National Labor Relations Board* v. *General Motors Corp.*, 373 U.S. 734), are "within the scope of § 14(b) * * * and therefore * * * subject to prohibition by * * * [state] law" (*Retail Clerks* v. *Schermerhorn*, 373 U.S. 746, 747). According to an opinion of its Attorney General (Br. in Opp. A1–A8), the right to work laws of Texas prohibit the agency shop.

The court of appeals held that the right-to-work laws of Texas apply to this collective bargaining agreement negotiated in New York which governs the relationship between a New York corporation and a group of workers who perform their work outside the boundaries of any State. It reached this conclusion because it thought that the majority of the workers had more extensive "contacts" with Texas than with New York or any other State. We submit that the court has applied the wrong test.

Under Section 8(a)(3) a union security clause in a collective bargaining agreement is lawful unless the State has interposed a different judgment about the extent to which its workers should be required to join or support a union as a condition of employment. The State is not entitled to impose its judgment upon all workers, however; it can overcome the national rule permitting union security clauses only if it has a significant interest in the work and workers involved. All members of the court of appeals agreed with this proposition.

In our view, the State's interest in overriding federal law and the desires of the union and the employer respecting union security is insufficient unless the work at issue is performed within the State in question. A contrary rule would allow extraterritorial application of state laws and would create the need, perceived by the court of appeals in this case, to "balance" the "contacts" of the many States that might have some legitimate interest in an employment

relationship. The court of appeals concluded that whatever State has the *most* interest in the employment relationship is necessarily entitled to apply its laws to the entire employment relationship. We submit that the proper question is whether any State has a *sufficient* interest in the employment transaction to be entitled under Section 14(b) to override federal law and the preferences of the union and employer. Since a State's interest is insufficient unless the employees work within the boundaries of that State, the judgment of the court of appeals should be reversed.[4]

B. NATIONAL POLICY PERMITS UNION SECURITY AGREEMENTS, AND A STATE CAN APPLY ITS JUDGMENT TO THE CONTRARY ONLY IF IT HAS A SUFFICIENT INTEREST IN THE EMPLOYMENT RELATIONSHIP

Section 8(a)(3) of the NLRA provides in part that no law of the United States "shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein on or after the thirtieth day" of employment. This provision modified Section 8(3) of the Wagner Act (49 Stat. 452), which had permitted not only the union shop but also the closed shop, under which applicants could be required to be union members before being hired. The amendments were designed primarily to eliminate the abuses of the closed shop. See generally 93 Cong. Rec. 3553–

[4] For the reasons stated in point II, *infra*, pp. 23–24, we believe the National Labor Relations Board does not have primary jurisdiction in this case.

3562 (1947), reproduced in 1 Legislative History of the Labor Management Relations Act, 1947 (G.P.O., 1948) ("Leg. Hist.") 733–747; S. Rep. No. 105, 80th Cong., 1st Sess. 6 (1947), 1 Leg. Hist. 412. But Section 8(a)(3) also expresses the policy of the United States that employers and labor organizations are at liberty voluntarily to agree to forms of union security other than the closed shop. See Representative Halleck's statement at 93 Cong. Rec. 3554 (1947), 1 Leg. Hist. 733: "the matter is to be left to free agreement" between the employer and the union. Cf. 93 Cong. Rec. 4885–4890 (1947), 2 Leg. Hist. 1418–1428.

The Court discussed the meaning of Section 8(a)(3) in *General Motors, supra,* 373 U.S. at 740–741:

> On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, Congress recognized that in the absence of a union-security provision "many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost." S. Rep. No. 105, 80th Cong., 1st Sess., p. 6, 1 Leg. Hist. L.M.R.A. 412.

Section 8(a)(3) accommodated the competing interests by providing that "[a]s far as the federal law was concerned, all employees could be required to pay their way" (373 U.S. at 741).

Although the national policy embodied in the NLRA favored freedom of choice with respect to union security agreements, Congress recognized that some States had reached a different judgment about the desira-

bility of such agreements. Congress added Section 14 (b) to the NLRA "to forestall the inference that federal policy was to be exclusive" (*Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board,* 336 U.S. 301, 314). Section 14(b) "was designed to prevent other sections of the [NLRA] from completely extinguishing state power over certain union-security arrangements. * * * It was desired to 'make certain' that § 8(a)(3) could not 'be said to authorize arrangements of this sort in States where such arrangements were contrary to the State policy.' H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60, 1 Leg. Hist. L.M.R.A. 564" (*Schermerhorn, supra,* 373 U.S. at 751).

The confines within which the questions presented in this case must be resolved therefore are well-settled. The federal policy enunciated in Section 8 (a)(3) permits employers and unions to agree to union security clauses, and Section 14(b) permits States to override that policy. But for what employees can the State enforce a policy judgment contrary to that of Congress? Surely Texas could not, for example, impose its judgment upon employees of Mobil living and working in New York City, even if they had once lived in Texas and even if some of Mobil's corporate offices were in Texas. Just as surely Texas could not impose its judgment upon an employee working in New York City just because, many years ago, the formal "hiring decision" for that employee had been made in Texas. Still less could

Texas impose its judgment on an entire group of employees working in New York City simply because, many years ago, approximately half of the employees had been hired in Texas.[5] And if Texas cannot impose its judgment upon such a group of employees outside its borders, how can it impose its judgment upon the seamen involved in the instant case, all of whom work and are paid outside its borders?

The court of appeals approached this problem by comparing the "contacts" of what it perceived to be "competing" States. Texas had some contacts with the seamen involved here, and New York had some contacts. In this case, the court of appeals held, there were more "contacts" with Texas than with New York. The court of appeals would presumably deal with the hypothetical cases in the preceding paragraph by holding that in them New York has more contacts, and therefore New York's judgment would prevail over that of Texas. The court's approach is to enforce the judgment of whatever State may have the preponderant balance of "contacts."

This approach may well be the correct way to make a "horizontal" judgment, choosing between the laws

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[5] Approximately 40 percent of the seamen sought employment at respondent's New York office. Even though the "final hiring decision" occurred in Texas, this was only a formality for seamen applying in New York; the Texas office set manpower requirements and kept personnel records, but Mobil's New York representatives chose the particular seamen (*supra*, p. 2). Moreover, the seamen hired in New York can, and frequently do, ship out of other than Texas ports, and more than half of all the seamen list a State other than Texas as their residence.

of two or more arguably interested States.[6] But the court of appeals failed adequately to grapple with the "vertical" judgment—the question whether *any* State has a sufficient interest in the employment transaction to substitute its policy for the policy of Congress expressed in Section 8(a)(3). The horizontal question that can be resolved by a balancing of "contacts" is simply irrelevant unless both Texas and New York have an interest in the employment transaction sufficient to allow both States to override the national policy. For the reasons developed in Part C, *infra,* we submit that neither Texas nor New York has such an interest here.

The court of appeals' major answer to the problems involved in making the vertical decision was its argument that, unless some State could apply its laws to employment of seamen on the high seas, then the court would have created an "exemption" for maritime employment. That would be impermissible, the court reasoned, because when Congress has desired to exempt an industry from state right-to-work laws it has done so explicitly. See Pet. App. 18a–19a. We sub-

[6] One commentator has approached the horizontal problem of choice among competing States by suggesting that, since the hiring process takes place in both Texas and New York, and both States have a large number of affected employees as residents, the problem should be resolved by applying both Texas' and New York's union security laws to the Company's work force. Under this proposal, members of the same crew, subject to the same contract, would be governed by opposing union security rules. Note, 88 Harv. L. Rev. 1620, 1629–1630 (1975). This proposal, with its potential for disruption of labor-management relations, has no support in the statute or its legislative history. And, in any event, this case involves the vertical choice rather than the horizontal one.

mit that this rationale begs the question. To argue that no State has a sufficient interest in particular employment is not to argue for an "exemption" from anything. Section 8(a)(3) states the general rule—a rule that union security clauses are permitted. It is the *State* that seeks to create an exemption from this general rule by invoking whatever powers were reserved to the States by Section 14(b). There is no logical reason why at least one State must have the power to exempt every employment transaction from the rule of Section 8(a)(3).

The provision of the Railway Labor Act (45 U.S.C. 152 Eleventh) taking rail employment out of the reach of the state authority, upon which the court of appeals relied, was addressed to quite a different problem—because railway workers often passed through many States in the course of their employment, there were many States with competing (and sufficient) claims to apply divergent union security laws to an employment transaction that took place within all of them. There was, in other words, a difficult horizontal problem. Congress resolved it by preempting all state laws. That it resolved a horizontal problem in such a fashion is not an argument in support of the court of appeals' resolution of the vertical problem here.

Moreover, the court of appeals' belief that the position we take here would produce an exemption for "the maritime industry" (Pet. App. 18a) is incorrect. States could continue to apply their right-to-work laws to many elements of the "maritime industry": longshoremen, tugboat crews, and crews of ships

upon intrastate waterways could be subject to state rules, as would shore-based administrative personnel.[7] The "bizarre consequences" (Pet. App. 18a) that the court attempted to avoid could not come about.

We therefore turn to what we believe to be the dispositive question—whether Texas has a sufficient interest in the relationship between Mobil and its seamen to allow it to preclude them from voluntarily agreeing to an agency shop clause.[8] This vertical ques-

[7] As this illustration indicates, we agree with the court of appeals that the fact that seamen usually are governed by uniform and federal maritime law is not an argument against the application of state right-to-work laws to the maritime industry. We do not agree with the dissenting judges (Pet. App. 25a–27a) that all maritime employment is outside the scope of state power. This Court has precluded state interference with maritime commerce only when pervasive federal regulation or the nature of the endeavor necessarily requires rules of uniform applicability. See *Askew* v. *American Waterways Operators, Inc.*, 411 U.S. 325, 337–344; *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 738–739; *Huron Portland Cement Co.* v. *City of Detroit*, 362 U.S. 440, 444. Cf. *American Radio Association* v. *Mobile S.S. Association, Inc.*, 419 U.S. 215; *Windward Shipping* v. *American Radio Association*, 415 U.S. 104. Section 14(b) expressly permits diversity of regulation concerning union security and contains no exemption for maritime workers in general (compare the Railway Labor Act, which contains such an exemption (45 U.S.C. 152 Eleventh)); nor would maritime commerce necessarily be disrupted or hindered by the application to different ships or employers of different union security rules.

[8] The court of appeals believed that the question was whether it was "the intent of the Congress to *prevent* Texas from applying its right to work law in the context of this employment relationship" (Pet. App. 7a; emphasis added). As we have indicated, this seems to put the question backwards. And, in that form, the question breeds needless complexities. We would have to ask: was it the intent of Congress to prevent New York from applying *its*

tion can be resolved without regard to whether Texas has more "contacts" with the seamen than does New York.

C. A STATE HAS A SUFFICIENT INTEREST IN THE EMPLOYMENT RELATIONSHIP ONLY IF THE EMPLOYEE PERFORMS SOME WORK WITHIN THE STATE

Shortly after enactment of the Taft-Hartley amendments to the NLRA, the Board was faced with the problem of determining the circumstances under which Section 14(b) permits a State to apply its right-to-work laws to an employment transaction. The Board was required by Section 9(e)(1) of the Act[9]

law (which allows union security agreements) to this employment relationship? It invites the observation of Judge Ainsworth (Pet. App. 30a, n. 21): "the majority opinion does not fully explain how Congress could fairly be said to have intended that a New York employee of Mobil, who resides in a state where his employment contract was entered into and where the agency shop provisions are permissible, and who performs no work whatever in Texas, should be prohibited by Texas law from enjoying the benefits of an agency shop provision in his employment contract."

[9] This provision (29 U.S.C. (1946 ed., Supp. I) 159(e)(1)), which was repealed in 1951 (Pub. L. 82–189, 65 Stat. 601), provided: "Upon the filing with the Board by a labor organization, which is the representative of employees as provided in Section 9(a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer."

to conduct union shop authorization elections. In *Northland Greyhound Lines, Inc.*, 80 NLRB 288, the Board considered the applicability of state union security laws to interstate bus drivers, and concluded (*id.* at 291):

> In resolving the question as to the applicable State law, such factors as the residences of the employees, the places where they were hired, their headquarters, the proportions of working time spent in the various States, and (with regard to the drivers), their routes, have been given consideration. In view of all the circumstances involved, we are persuaded that the headquarters of the employees provide the best criteria because they represent the focal points of the employment relationship. The headquarters are where the employees report to work, receive their instructions, and are paid their salaries. It is, therefore, in the States in which they have their headquarters that the provisions of any agreement between a union and an employer regarding the employees involved will be effectuated. In view of the fact that most of the essential matters with respect to the employment relationship will be dealt with in the States where the employees have their headquarters, we believe that application of this test to determine which State law shall control will result in the least amount of extra-territorial effect being given to the laws of one State as against those of another. [Footnote omitted.]

Accordingly, the Board directed that "all employees whose headquarters are located in States having legislation prohibiting union-shop agreements should be excluded from the unit hereinafter found appropriate" (*ibid.*).

In *Western Electric Co.*, 84 NLRB 1019, 1022, decided the next year, the Board held that the "job site, as that is where [the employees] report for work, receive their instructions, and are paid their wages," was the "headquarters" for the company's field equipment workers. The Board rejected a contention that those employees, who worked in 45 states and were subject to frequent transfers, all should be subject to the laws of the State where their employer had its main office (*id.* at 1023, n. 15). See also *Giant Food Shopping Center, Inc.*, 77 NLRB 791.

These cases, to be sure, involved the horizontal choice among competing States, rather than the vertical choice between state law and federal law. But the Board approached the question by recognizing that the horizontal problem arises only if a worker performs work in two or more States—in other words, a State does not have a sufficient interest in a particular group of employees to warrant application of the State's union security laws to them unless the individual employees work within that State. Only if two or more States have a sufficient interest is it necessary to decide which interest is the greater. That can be done, the Board held, by looking to the "headquarters" of those who perform work in two States. The Board's test, unlike that of the court of appeals, minimizes the extraterritorial effect of state regulation on union security agreements, while at the same time preserv-

ing for each State the right to confer the benefit of that regulation on its own work force, that is, the employees working within the State's boundaries. The Board's test also has the virtue of simplifying decision making, rather than creating an *ad hoc* analysis, the outcome of which cannot be foreseen while a collective bargaining agreement is being negotiated.

The Board's "job situs" or "headquarters" test is supported by the scanty legislative history of Section 14(b). The House committee report (H.R. Rep. No. 245, 80th Cong., 1st Sess. 34 (1947), 1 Leg. Hist. 325) states that union security clauses "are valid only if they are valid under the laws of any State in which they are to be performed * * *." A union security clause could be "performed" only where the work is done or where the dues are collected and sent to the union. Here, all of these events take place outside Texas. The work is performed at sea; the dues are deducted from wages paid at sea; the dues are mailed to the Union in New York. The conference committee report (H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60 (1947), 1 Leg. Hist. 564) states that no part of the NLRA "could be said to authorize [union security] arrangements * * * *in* States where such arrangements were contrary to the State policy" (emphasis added). Read in context, this passage appears to denote the State in which the work is being performed.

The court of appeals sought to distinguish *Northland Greyhound* and *Western Electric* on the ground that the "issue raised in those cases * * * was not whether some state law applied to the employment

relationship but *which* state law applied" (Pet. App. 5a, n. 5). But this distinction assumes that "*some* state had to meet the criteria of 14(b)" (Pet. App. 34a, n. 6; Brown, C. J., dissenting; emphasis added). There is no reason why this must be so. If, as we have shown, the purposes of Section 14(b) are best effectuated by holding that a State has a sufficient interest in applying its policies with respect to union security clauses only to those working within its boundaries, then no State can establish such an interest with respect to seamen who perform their work on the high seas, beyond the boundaries of any State. Chief Judge Brown correctly observed in dissent (Pet. App. 33a–34a):

> Section 8(a)(3) expressly sanctions as a matter of federal policy union shop agreements with the important limitation that such agreements will not be valid "as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." While noting this "tension" between federal and state policy, the Court starts and finishes with the tacit assumption that the Court must find *some* applicable state law—almost in a conflicts-of-law analysis. The basis for that assumption is in no way discernible from the Act itself or its legislative history. Instead, the emphasis of the Act is that union security agreements are of such importance that absent state proscription outlawing union shop employment relationships within that state, they will be favored. The job situs rule, though never before applied in

precisely this situation, is merely a logical distillation of § 14(b). [Footnote omitted.]

The court of appeals held (Pet. App. 11a–12a) that the place of hiring, rather than the place of work, should be the touchstone for purposes of Section 14 (b). It believed that the amendments to the National Labor Relations Act reflect congressional concern with the effects of compulsory unionism on the hiring process, and particularly with abuses in maritime union hiring halls. See S. Rep. No. 105, *supra,* at 6–7, 1 Leg. Hist. 412–413. But the legislative history marshalled by the court of appeals is irrelevant to the power of the State under Section 14(b). Section 14(b) was not the means Congress selected for eradicating abuses in the hiring process. Congress sought to deal with abuses in hiring by amending Section 8(a)(3) to outlaw the closed shop and to provide safeguards under the union shop and lesser forms of union security which were permitted as a matter of federal law (and which most of the States have chosen not to displace under Section 14(b)).

Thus, in explaining the provisions of the Senate committee bill, which were ultimately adopted, Senator Taft stated (93 Cong. Rec. 4885–4886 (1947), 2 Leg. Hist. 1420):

> * * * [I]t abolishes the closed shop, insofar as that means that only members of the union can be employed. *That is the hiring-hall proposition.* But the bill permits the union shop * * *
>
> In the bill we say that the employee must join the union within 30 days after he is employed.
>
> We say that if at that time the union will not admit the employee as a member of the union, on the same terms and conditions as those on which any other member of the union is admitted to it nevertheless the employer can continue to employ that man. * * *
>
> * * * We further provide in the bill that if a man is fired by the union for some reason other than nonpayment of dues, the employer does not have to discharge him. * * * [Emphasis added.] [10]

Section 14(b) was merely designed to permit a State which so desired to relieve its workers, once they were hired, of any obligation to join a union and pay dues and fees to it as a condition of continued employment.

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[10] See also the following colloquy between Senators Donnell and Taft (93 Cong. Rec. 4886 (1947), 2 Leg. Hist. 1421):

"Mr. DONNELL. * * * Under the bill as it is now written, an agreement providing that an employer would not employ anyone who was not already a member of the union would be invalid, would it not?

"Mr. TAFT. That is correct. I think the most direct case of that sort is to be found in the maritime industry on the Pacific coast. The testimony was that a provision similar to the one the Senator from Missouri has referred to led to a condition on the ships engaged in the Alaskan run, where there was no discipline whatever; a man might be discharged for action contrary to good discipline, but in a few days he might be back in the hiring hall, and then the shipping line might be compelled to employ him again. Of course, under such an arrangment a man could not even get a job unless the union admitted him to union membership. The bill will make such a contract illegal."

Section 14(b) was not directed to the abuses of the hiring process.[11]

That Section 14(b) is directed at union security agreements, and not at the hiring process generally, is confirmed by the cases holding that a hiring hall not conditioned on union membership (and therefore lawful under federal law, see *Local 357, Teamsters* v. *National Labor Relations Board,* 365 U.S. 667) may not be regulated or forbidden by a State under Section 14(b), even if the hiring hall is used for job referrals within that State. *National Labor Relations Board* v. *Tom Joyce Floors, Inc.,* 353 F. 2d 768, 770–771 (C.A. 9); *National Labor Relations Board* v. *Houston Chapter, Associated General Contractors of America, Inc.,* 349 F. 2d 449, 452–453 (C.A. 5), certiorari denied, 382 U.S. 1026. Nor may a State regulate check-off arrangements pursuant to the authority conferred under Section 14(b). *SeaPAK* v. *Industrial, Technical & Professional Employees, Div. of N.M.U.,* 300 F. Supp. 1197 (S.D. Ga.), affirmed *per curiam,* 423 F. 2d 1229 (C.A. 5), affirmed without opinion, 400 U.S. 985.

[11] Answering the charge that, from the standpoint of the individual employee, there was no real difference between the closed shop and the union shop, Senator Taft stated (93 Cong. Rec. 4886 (1947), 2 Leg. Hist. 1422):

"The great difference is that in the first instance a man can get a job without joining the union or asking favors of the union, and once he has the job he can continue in it for 30 days, and during that time the employer will have an opportunity to ascertain whether he is a capable employee. The fact that the employee will have to pay dues to the union seems to me to be much less important. The important thing is that the man will have the job. * * * "

In sum, because the location of the employees' jobsite is controlling for purposes of Section 14(b), and because the seamen here work on the high seas, the Texas right-to-work laws cannot properly be applied to them.

II. The Board Does Not Have Primary Jurisdiction of This Case

This Court held in *Smith* v. *Evening News Association,* 371 U.S. 195, 197–198, that federal courts have jurisdiction to determine the validity of a provision in a collective bargaining agreement even though the dispute may also involve an unfair labor practice within the Board's jurisdiction. Cf. *Connell Construction Co.* v. *Plumbers Local No. 100,* 421 U.S. 616, 626; *Retail Clerks* v. *Schermerhorn,* 375 U.S. 96, 102–105. The court of appeals therefore correctly held that the jurisdiction of the district court to determine the validity of the agency shop clause here was not preempted by whatever parallel authority may be lodged in the Board.

Chief Judge Brown suggested (Pet. App. 34a–36a) that the district court should have deferred to the primary jurisdiction of the Board. But such deferral would presuppose the availability of a Board procedure for resolution of the issue in question. *Local No. 189, Meatcutters* v. *Jewel Tea Co.,* 381 U.S. 676, 687–688. The Board has no generally available procedure for resolving questions of this sort. Although the parties could have sought an advisory opinion, such proceedings generally have been entertained by the

Board only for determining whether the amount of commerce involved in a case would satisfy the Board's discretionary jurisdictional yardsticks. See, *e.g., National Bulk Carriers, Inc.*, 134 NLRB 1186; *Jemcon Broadcasting Co.*, 135 NLRB 362, 367; *Connecticut State Board of Labor Relations and Hartford Building Maintenance Co.*, 145 NLRB 1415.

As the Court observed in *Jewel Tea, supra,* 381 U.S. at 687, a private litigant cannot ensure Board determination of an issue, for "[i]t is the function of the Board's General Counsel rather than the Board or a private litigant to determine whether an unfair labor practice complaint will ultimately issue." What is more, even should the General Counsel bring a case of this sort before the Board, it is far from clear that the Board could resolve the dispute, because maintenance of a union security clause alleged to violate state law generally is not an unfair labor practice under the NLRA if the clause satisfies the requirements of Section 8(a)(3). See *Retail Clerks* v. *Schermerhorn, supra,* 375 U.S. at 102–103; *Local 34, Int'l Molders (Daniel Garczynski)*, 150 NLRB 913, 916–919 Quarterly Report of the General Counsel for the First Quarter of 1975, 89 LRR 199–200. Cf. Lab. Rels. Yearbook (1972) 213–214; but see *United Steelworkers (Capitol Foundry Div.)*, 199 NLRB 153. The Board therefore does not have primary jurisdiction in cases of this sort.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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In our earlier brief we argued that employees whose jobsite is the high seas are not subject to the right-to-work laws of any State. Respondent correctly points out (Br. 4, n. 5, 29) that its employees work aboard ship within the territorial waters of Texas during pilotage and unloading and loading operations.[1] To be sure, to that degree, the employees perform "some" work within the State of Texas. That work, however, is not sufficient to make Texas the jobsite of the seamen.

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[1]For example, approximately 6 hours, each way, are spent in pilotage to and from the port of Beaumont, and an average of 18 hours are spent in that port (App. 117-118).

Every voyage has a beginning and an end. The work performed at either end may properly be viewed as merely incidental to the voyage, which, in this case, occurs on the high seas.[2] Moreover, a comparable amount of work time is devoted to pilotage, loading and unloading within the territorial waters of New York and other east coast States (App. 114, 119). To permit the time spent in Texas waters for pilotage, loading and unloading to serve as the foundation for application of the Texas right-to-work laws would allow Texas to override the judgments of New York and other east coast States, which have an equivalent interest in applying their policies to the seamen here involved, and which have concluded that union security clauses should be permitted.[3]

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[2]The district court found that (Pet. App. 7d):

> Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters.

This finding does not support respondent's contention (Br. 13) that "[t]he district court found that [the] * * * employees perform 10 to 20 percent of their work in the State of Texas." The employees do not necessarily perform seamen's work during the entire time that their ship is within the State of Texas—they may leave the ship before it reaches Texas or they may be off duty during pilotage, loading and unloading.

Moreover, as Judge Ainsworth observed in dissent (Pet. App. 24a-25a, n. 2), "[i]nformation extracted from vessel logs shows that of the eight tankers operated by the company, five of them making typical trips touching the port of Beaumont for a period of time in May and June 1972 were in that port only 5.5% of the total time. A sixth vessel did not touch the Texas port during that period of time and part of July 1972."

[3]The fact that allotment, vacation, and federal tax withholding checks are written and mailed from Texas does not, as respondent asserts (Br. 30), show that "the Solicitor General has * * * misstated the facts * * * with regard to payments of wages." The record shows that $1,994,000.00 annually, the bulk of the employees' net wages (respondent's figure of $1,117,000.00 is the amount of the allotment checks), is paid on board ship in northern ports (App. 67-68, 124-125, 238). The significance of this is not diminished either because some seamen choose to have part of their pay sent to dependents or because respondent performs the function, mandated by federal law, of withholding tax. monies. The payroll functions to which respondent points indicate that the *Company's* headquarters are in Texas. But, under the Board's test, the location of the Company's headquarters is irrelevant. It is the *employees'* headquarters or jobsite that is controlling. For the same reason, it is irrelevant that more employees may spend nonworking time in Texas than in other States (Pet. App. 15a).

In sum, for the reasons set forth in our earlier brief, the location of the employees' jobsite is controlling for purposes of Section 14(b), and the jobsite of the seamen here is the high seas. Therefore, the Texas right-to-work laws cannot properly be applied.

Respectfully submitted.

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